TRANSCRIPT OF

SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1921.

Term No. 25[illegible]

ARTHUR D. NEWTON, AS ATTORNEY GENERAL OF THE STATE OF NEW YORK, EDWARD SWANN, AS DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK, AND LEWIS NIXON, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, FIRST DISTRICT, APPELLANTS,

vs.

CONSOLIDATED GAS COMPANY OF NEW YORK, RESPONDENT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED MARCH 17, 1922.

(File No. [illegible])

257-9

INDEX.

VOLUME XII.

	PAGE
Discussion re Yalden report	9969
Defendant's Exhibit AA49	9995
Testimony of Hermine Peiter (direct)	9997
Testimony of Eugene H. Rosenquest (direct)	10000
Defendant's Exhibit AA50 (for identification)	10006
(Received)	10232
Defendant's Exhibit AA51	10012
Defendant's Exhibit AA52	10014
Testimony of Eugene H. Rosenquest (cross)	10015
Testimony of Eugene H. Rosenquest (redirect)	10024
Testimony of Eugene H. Rosenquest (recross)	10027
Testimony of Edward H. Lyon (direct)	10030
Defendant's Exhibit AA53	10035
Defendant's Exhibit AA54	10036
Defendant's Exhibit AA55	10040
Defendant's Exhibit AA56	10040
Defendant's Exhibit AA57	10042
Defendant's Exhibit AA58	10045
Defendant's Exhibit AA59	10046
Defendant's Exhibit AA60	10047
Defendant's Exhibit AA61	10049
Defendant's Exhibit AA62	10049
Defendant's Exhibit AA63	10050
Defendant's Exhibit AA64	10051
Defendant's Exhibit AA65	10051
Defendant's Exhibit AA66	10052
Defendant's Exhibit AA67	10053
Defendant's Exhibit AA68	10054
Defendant's Exhibit AA69	10054
Defendant's Exhibit AA70	10054
Testimony of Edward H. Lyon (cross)	10056
Testimony of Edward H. Lyon (redirect)	10080
Testimony of Hermine Peiter (recalled direct)	10087
Defendant's Exhibit AA71 (for indentification)	10088
Defendant's Exhibit AA72 (for identification)	10088
Defendant's Exhibit AA73 (for identification)	10088
Testimony of Stephen J. Hanley (direct)	10088
Testimony of Stephen J. Hanley (cross)	10102
Testimony of Matthew J. Cahill (direct)	10107
Testimony of Matthew J. Cahill (cross)	10121
Testimony of Patrick J. Cronin (direct)	10124
Testimony of Patrick J. Cronin (cross)	10136
Testimony of Frank J. Bell (direct)	10139

P
Testimony of Frank J. Bell (cross) 10
Testimony of Frank J. Bell (redirect) 10
Testimony of Clarence J. Ramsey (direct) 10
Testimony of Clarence J. Ramsey (cross) 10
Testimony of C. M. Higgins (direct) 10
Defendant's Exhibit AA74 10
Defendant's Exhibit AA75 10
Defendant's Exhibit AA76 10
Defendant's Exhibit AA77 10
Defendant's Exhibit AA78 10
Defendant's Exhibit AA79 10
Defendant's Exhibit AA80 10
Defendant's Exhibit AA81 10
Defendant's Exhibit AA82 10
Defendant's Exhibit AA83 10
Defendant's Exhibit AA84 10
Defendant's Exhibit AA85 10
Defendant's Exhibit AA86 10
Defendant's Exhibit AA87 10
Defendant's Exhibit AA88 10
Defendant's Exhibit AA89 10
Defendant's Exhibit AA90 10
Defendant's Exhibit AA91 10
Defendant's Exhibit AA92 10
Defendant's Exhibit AA93 10
Defendant's Exhibit AA94 10
Defendant's Exhibit AA95 10
Defendant's Exhibit AA96 10
Defendant's Exhibit AA97 1
Defendant's Exhibit AA98 10
Defendant's Exhibit AA99 10
Defendant's Exhibit AA100 10
Defendant's Exhibit AA101 10
Defendant's Exhibit AA102 10
Defendant's Exhibit AA103 10
Defendant's Exhibit AA104 10
Defendant's Exhibit AA105 10
Defendant's Exhibit AA106 10
Defendant's Exhibit AA107 10
Defendant's Exhibit AA108 10
Defendant's Exhibit AA109 10
Defendant's Exhibit AA110 10
Testimony of C. M. Higgins (cross) 10
Complainant's Exhibit 412 10
Complainant's Exhibit 413 10
Complainant's Exhibit 414 10
Complainant's Exhibit 415 10
Complainant's Exhibit 416 10

Testimony of C. M. Higgins (cross)—Continued.	PAGE
Complainant's Exhibit 417	10213
Complainant's Exhibit 418	10213
Complainant's Exhibit 419	10214
Complainant's Exhibit 420	10214
Complainant's Exhibit 421	10214
Complainant's Exhibit 422	10215
Complainant's Exhibit 423	10215
Complainant's Exhibit 423A	10216
Complainant's Exhibit 424	10216
Complainant's Exhibit 425	10216
Complainant's Exhibit 426	10217
Complainant's Exhibit 427	10217
Complainant's Exhibit 428	10218
Complainant's Exhibit 429	10218
Complainant's Exhibit 430	10218
Complainant's Exhibit 431	10219
Complainant's Exhibit 432	10219
Complainant's Exhibit 433	10220
Complainant's Exhibit 434	10220
Complainant's Exhibit 435	10220
Complainant's Exhibit 436	10221
Complainant's Exhibit 437	10221
Complainant's Exhibit 438	10221
Complainant's Exhibit 439	10223
Complainant's Exhibit 440	10223
Complainant's Exhibit 441	10223
Complainant's Exhibit 442	10223
Complainant's Exhibit 443	10223
Complainant's Exhibit 444	10223
Complainant's Exhibit 445	10225
Complainant's Exhibit 446	10225
Complainant's Exhibit 447	10225
Complainant's Exhibit 448	10225
Complainant's Exhibit 449	10225
Complainant's Exhibit 450	10225
Complainant's Exhibit 451	10225
Testimony of C. M. Higgins (redirect)	10231
Testimony of J. A. Pearson (direct.)	10252
Testimony of J. A. Pearson (cross)	10256
Testimony of J. A. Pearson (redirect)	10264
Testimony of James H. Jourdan (direct)	10266
Testimony of James H. Jourdan (cross)	10268
Testimony of Ralph Elsman (direct)	10269
Defendant's Exhibit AA111	10271
Testimony of Ralph Elsman (cross)	10274
Testimony of Carlton Macy (direct)	10276
Defendant's Exhibit AA112	10276
Defendant's Exhibit AA113	10277

PAGE
Testimony of Carlton Macy (cross) 10278
Complainant's Exhibit 452..... 10278
Complainant's Exhibit 453..... 10279
Complainant's Exhibit 454..... 10279
Complainant's Exhibit 455..... 10280
Testimony of William Welsh (direct) 10281
Defendant's Exhibit AA114..... 10282
Defendant's Exhibit AA115..... 10282
Defendant's Exhibit AA116..... 10283
Defendant's Exhibit AA117..... 10283
Testimony of William Welsh (cross)..... 10284
Complainant's Exhibit 456..... 10285
Testimony of Michael J. Keane (direct)..... 10285
Defendant's Exhibit AA118..... 10286
Testimony of George E. Goldthwaite (direct)..... 10288
Defendant's Exhibit AA119..... 10297
Defendant's Exhibit AA120..... 10298
Defendant's Exhibit AA121..... 10300
Defendant's Exhibit AA122..... 10321
Defendant's Exhibit AA123..... 10326
Defendant's Exhibit AA124..... 10327
Testimony of Charles T. White (direct) 10332
Testimony of Charles T. White (cross) 10359
Testimony of George F. Baker, Jr. (direct)..... 10361
Testimony of George F. Baker, Jr. (cross)..... 10367
Testimony of Clifford H. Pyle (direct) 10370
Defendant's Exhibit AA125..... 10380
Defendant's Exhibit AA126..... 10393
Testimony of Charles Frank (direct)..... 10394
Defendant's Exhibit AA127 (for identification)..... 10399
Defendant's Exhibit AA128 (for identification)..... 10402
Defendant's Exhibit AA129..... 10404
Defendant's Exhibit AA129½..... 12464
Defendant's Exhibit AA130..... 10406
Defendant's Exhibit AA131..... 10407
Defendant's Exhibit AA131½..... 12464
Testimony of Clifford H. Pyle (cross)..... 10413
Testimony of George E. Goldthwaite (recalled direct).. 10417
Defendant's Exhibit AA132..... 10418
Defendant's Exhibit AA133..... 10420
Defendant's Exhibit AA134..... 10424
Defendant's Exhibit AA135..... 10426
Defendant's Exhibit AA136..... 10427
Defendant's Exhibit AA137..... 10429
Defendant's Exhibit AA138..... 10432
Defendant's Exhibit AA139..... 10433
Defendant's Exhibit AA140..... 10434

PAGE
Testimony of Clifford H. Pyle (recalled redirect) 10430
Testimony of Willard F. Hine (direct) 10434
Testimony of George E. Goldthwaite (recalled cross) ... 10547
Testimony of Willard F. Hine (recalled cross) 10551
Testimony of Willard F. Hine (redirect) 10589
Testimony of Willard F. Hine (recross) 10591
Testimony of George E. Goldthwaite (recalled cross) ... 10593
Testimony of George E. Goldthwaite (recross) 10593
Testimony of George E. Goldthwaite (redirect) 10622
Testimony of Clifford H. Pyle (recalled recross) 10629
Testimony of Patrick A. Lynch (direct) 10641
Defendant's Exhibit AA141 10647
Defendant's Exhibit AA142 10649
Defendant's Exhibit AA143 10653
Defendant's Exhibit AA144 10654
Defendant's Exhibit AA145 10656
Defendant's Exhibit AA146 10658
Defendant's Exhibit AA147 10658
Defendant's Exhibit AA148 10658
Defendant's Exhibit AA149 10658
Defendant's Exhibit AA150 10658
Defendant's Exhibit AA151 10658
Defendant's Exhibit AA152 10659
Defendant's Exhibit AA153 10659
Defendant's Exhibit AA154 10659
Defendant's Exhibit AA155 10659
Defendant's Exhibit AA156 10659
Defendant's Exhibit AA157 10659
Defendant's Exhibit AA158 10659
Defendant's Exhibit AA160 10659
Defendant's Exhibit AA161 10659
Defendant's Exhibit AA162 10660
Defendant's Exhibit AA163 10660
Defendant's Exhibit AA164 10660
Defendant's Exhibit AA165 10660
Defendant's Exhibit AA166 10660
Defendant's Exhibit AA167 10660
Defendant's Exhibit AA168 10660
Defendant's Exhibit AA169 10660
Defendant's Exhibit AA170 10661
Defendant's Exhibit AA171 10661
Defendant's Exhibit AA172 10661
Defendant's Exhibit AA173 10661
Defendant's Exhibit AA174 10661
Defendant's Exhibit AA175 10661
Defendant's Exhibit AA176 10661
Defendant's Exhibit AA177 10661

Testimony of Patrick A. Lynch (direct)—Continued. PAGE
Defendant's Exhibit AA178 10661
Defendant's Exhibit AA179 10661
Defendant's Exhibit AA180 10661
Defendant's Exhibit AA181 10661
Defendant's Exhibit AA182 10661
Defendant's Exhibit AA183 10661
Defendant's Exhibit AA184 10661
Defendant's Exhibit AA185 10661
Defendant's Exhibit AA186 10661
Defendant's Exhibit AA186½ 10662
Defendant's Exhibit AA187 10662
Defendant's Exhibit AA188 10663
Defendant's Exhibit AA189 10664
Defendant's Exhibit AA190 10664
Testimony of Charles Frank (recalled cross) 10666
Testimony of Robert A. Carter (direct) 10680
Defendant's Exhibit AA191 10688
Testimony of Charles Frank (recalled redirect) 10696
Testimony of Robert A. Carter (recalled direct) 10743
Testimony of William L. Ransom (direct) 10747
Defendant's Exhibit AA192 (for identification) 10756
Testimony of R. E. Livingston (direct) 10759
Testimony of R. E. Livingston (cross) 10796
Testimony of R. E. Livingston (redirect) 10798
Testimony of Granville W. Pullis (direct) 10809
Defendant's Exhibit AA193 10811
Defendant's Exhibit AA194 10812
Defendant's Exhibit AA195 10813
Defendant's Exhibit AA196 10814
Defendant's Exhibit AA197 10815
Defendant's Exhibit AA198 10815
Defendant's Exhibit AA199 10816
Defendant's Exhibit AA200 10817
Defendant's Exhibit AA201 10817
Defendant's Exhibit AA202 10817
Defendant's Exhibit AA203 10818
Defendant's Exhibit AA204 10818
Defendant's Exhibit AA205 10819
Defendant's Exhibit AA206 10819
Defendant's Exhibit AA207 10819
Defendant's Exhibit AA208 10820
Testimony of Granville W. Pullis (cross) 10820
Complainant's Exhibit 457 10821
Testimony of Wilson W. Thompson (direct) 10823
Defendant's Exhibit AA209 10826
Defendant's Exhibit AA210 10826
Defendant's Exhibit AA211 10827
Defendant's Exhibit AA212 10827

PAGE
Testimony of Wilson W. Thompson (cross) 10827
Testimony of George E. Goldthwaite (recalled direct) .. 10828
Testimony of George E. Goldthwaite (cross) 10832
Testimony of Clifford H. Pyle (recalled direct) 10834
Testimony of Francis T. Mylott (direct) 10837
Defendant's Exhibit AA213 10853
Defendant's Exhibit AA214 10854
Defendant's Exhibit AA215 10854
Defendant's Exhibit AA216 10854
Defendant's Exhibit AA217 10854
Defendant's Exhibit AA218 10854
Defendant's Exhibit AA219 10854
Defendant's Exhibit AA220 10854
Defendant's Exhibit AA221 10854
Defendant's Exhibit AA222 10854
Defendant's Exhibit AA223 10854
Defendant's Exhibit AA224 10854
Defendant's Exhibit AA225 10873
Defendant's Exhibit AA226 10873
Defendant's Exhibit AA227 10873
Defendant's Exhibit AA228 10873
Defendant's Exhibit AA229 10873
Defendant's Exhibit AA230 10873
Defendant's Exhibit AA231 10873
Defendant's Exhibit AA232 10873
Defendant's Exhibit AA233 10873
Defendant's Exhibit AA234 10883
Defendant's Exhibit AA235 10884
Defendant's Exhibit AA236 10884
Defendant's Exhibit AA237 10884
Defendant's Exhibit AA238 10884
Defendant's Exhibit AA239 10884
Defendant's Exhibit AA240 10884
Testimony of Nathan C. Lenfester (direct) 10886
Testimony of Nathaniel Silverman (direct) 10890
Defendant's Exhibit AA241 10920
Testimony of F. J. Bell (direct) 10923
Defendant's Exhibit AA242 (for identification) 10924
Testimony of Adna F. Weber (direct) 10925
Defendant's Exhibit AA243 10936

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 29905

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, January 12, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 29906
MR. O'BRIEN, of Counsel for defendant Swann.

The Master: On Friday, there was offered in evidence by Mr. Chambers the so-called Yalden report, which is found in Senate Document No. 47 of Senate Documents, Vol, IV, of 1886. At page 8524 of the record I sustained the complainant's objection to the reception of that paper in evidence. After making that ruling I 29907
looked at the book, Senate Documents, Vol. IV, of 1886, and found that Judge Ransom had offered, so much of that document, namely, Senate Document 47, as is contained in the report of the committee, Roman numbers I to LXXXIII and that Appendix D, offered by Mr. Chambers was likewise part of that same Senate Document No. 47. I thereupon announced that I would reserve decision on my ruling already made until this morning.

29908

I have given the matter a good deal of consideration and have reached the conclusion that whether or not Appendix D is part of the report, as argued by Mr. Chambers, it is part of the Senate Document No. 47, part of which was offered by Mr. Ransom.

I shall therefore receive that Yalden report in evidence. By making this ruling I am not passing on its materiality or as to whether it bears on any part of this case, but the Yalden report will be received in evidence.

Mr. Ransom: Before that is done, may I say
29909 this: In view of the objections which were made by the defendants, very strenuous objections to the receipt of that portion of Senate Document 47, on page 8346 of the printed record, and the exception taken by the defendants at that time to your Honor's ruling receiving that portion of Senate Document 47, the complainant asks leave to withdraw Exhibit 398, being that portion of Senate Document No. 47 which was received in evidence on page 8346 of the record.

The Master: Do you consent to that, Mr. Chambers?

Mr. Chambers: No, I object to that.

29910 The Master: Of course, by offering the balance of this Senate Document in evidence you are waiving your exception as to the reception of the first part.

Mr. Chambers: We will take the responsibility for that.

The Master: No, I want to know. I am not going to let you have an exception on the record, and take advantage of it. I have to have it clearly understood, because unless that is done—

Mr. Hayward: We withdraw our exception.

29911

The Master: I am not going to let you take advantage of the situation in that form. If you won't waive any objection heretofore made, which was overruled, and you having the benefit of an exception—

Mr. Chambers: To the majority report?

The Master: Any part of Senate Document No. 47 that you heretofore objected to.

Mr. Ransom: We believe, in view of the objection and exception, and the grounds then urged, that we have a right to withdraw it.

The Master: I don't think so. You closed your case, and you put it in at that time, and unless they consent to it I shall not grant the motion. On the other hand, if they take the position that they insist on their exception, and still press the objection, I shall sustain the objection. It must be either one way or the other. 29912

Mr. Chambers: You don't want us to expressly withdraw our exceptions?

The Master: Yes. I shall take under consideration Judge Ransom's application, in the nature of a re-consideration of my ruling, as if the ruling had never been made. If the objection is not withdrawn, I shall sustain the objection and strike the exhibit from the record. 29913

Mr. Hayward: I don't think we can urge our exception after putting in this part of the document. Personally I would be willing to withdraw the exception.

The Master: The exception must be withdrawn, or I will sustain the objection and strike the exhibit from the record.

Mr. O'Brien: Isn't this a situation that comes up frequently in the trial of a case, where you have made a ruling, for instance on the books going in, and we make our objection, and stand on

29914

the exception, and then in meeting that proof we come forward with—

The Master: Mr. O'Brien, don't argue with me.

Mr. O'Brien: I have in mind, for instance, the testimony of Mr. Mayer, who is dead.

The Master: Do you still press—

Mr. O'Brien: Well you just let me give you my illustration?

The Master: No, I have given this a lot of thought. Do you still press the objection to Mr. Ransom's offer of the exhibit?

29915 Mr. O'Brien: I didn't hear what Mr. Ransom said.

The Master: Judge Ransom, is it your application that I shall reconsider the objection and ruling heretofore made?

Mr. Ransom: It is.

The Master: Do you consent to my sustaining the objection?

Mr. Ransom: I do.

The Master: Objection sustained. You men have to answer when I ask. Objection sustained and the exhibit is stricken from the record.

Mr. Chambers: Mr. O'Brien does not under-

29916 stand—

Mr. O'Brien: I want to hear what Mr. Ransom says on the record.

The Master: I understood it perfectly, and I tried to get you men to say—

Mr. Chambers: We are going to.

The Master: It is too late now.

Mr. O'Brien: There is no too late in this court.

Mr. Hayward: I want to say something when Mr. O'Brien gets through.

29917

Mr. O'Brien: I want to find out whether Mr. Ransom was on the record as withdrawing his offer?

The Master: He made an application to withdraw it. He now asks me to reconsider the objection, and has consented to my sustaining the objection. I have sustained it and the exhibit is stricken out. That ends it.

Mr. O'Brien: If that be the position then we will offer the Senate Document in Evidence.

Mr. Hayward: I want to get this thing straight here. At the time this was offered I with the other defendants objected and then afterwards urged with Mr. Chambers, that the subsequent part of the Senate Document should go in. This morning when Mr. Ransom offered to withdraw that offer I objected to it, and on your Honor's statement that we should withdraw our exception, I stated that that would necessarily follow, and in addition I said that we would withdraw the objection and exception made at the time, and Mr. Chambers said the same thing. I think in view of the objection of two of us to the offer being withdrawn, and our express statement that we not only could not urge any exception to it but that we would expressly withdraw any exception that your Honor should leave it in.

29918

29919

The Master: The trouble is that you have three counsels in this case, and that you and I could dispose of this very quickly; but other counsel insisted upon certain rights. This case is still pending. At the time I indicated my doubt as to the reception of the report, but Judge Ransom pressed it because the United States Supreme Court had referred to it. Judge Ransom now in the form of an application to withdraw

29920

his exhibit, in substance consented to my sustaining the objection. I could not get any statement from Mr. O'Brien when I asked him.

Mr. Chambers: He didn't understand it.

The Master: I sustained the objection, and the exhibit is stricken out, and nothing of Senate Document 47 is going to go in. That ends it.

Mr. Chambers: Mr. O'Brien joins us in our consent to withdraw our exception.

The Master: It is too late.

Mr. Hayward: Mr. O'Brien was trying to

29921 find out something—

The Master: Mr. O'Brien would not answer when I asked him a simple direct question. The ruling is made.

Mr. O'Brien: I was trying to find out the formal position taken by Judge Ransom in respect to it. From what Mr. Chambers told me I did not think he had withdrawn the offer. It was not clear just what the situation was that was taken, but there is unanimity among the defendants in our position and I join with them in withdrawing the exception.

The Master: It is too late now.

29922 Mr. Hayward: I do not think this is necessarily fatal one way or the other, but I do think that you looked this thing up and on your statement of Friday, and the investigation made by you since you have confirmed your indication of what the law was, and there isn't any question but what you were right.

The Master: No question in the world.

Mr. Hayward: And you came back this morning—

The Master: And apparently Judge Ransom saw that I was right, and saw that the balance

29923

of Senate Document 47 had to go in. I tried to get you men to say that you did not press your objection—

Mr. Hayward: We did that.

The Master: You did.

Mr. Hayward: Yes, and Mr. Chambers.

The Master: But Mr. O'Brien wouldn't do it. I am not going to let you waste all day on these things. I gave you a fair opportunity.

Mr. Chambers: But you had already ruled in that part of the report. Then Mr. Ransom withdrew his offer afterwards. I think you ought to give us a chance to take advantage of that. 29924

The Master: No, I gave you a very full opportunity.

Mr. Hayward: Mr. Gilbert, this is what you are doing: You decided this thing when you came back here this morning on the merits, and decided it right. You then made this proposition that we should withdraw our exceptions, and we agreed to that proposition that we would withdraw our exception, Mr. Chambers and I—

The Master: Yes, but Mr. O'Brien would not.

Mr. Hayward: Mr. O'Brien then got up and began asking you some questions, and instead 29925 of deciding this thing as you did when you came into court, on the merits, you are deciding it because you are provoked at Mr. O'Brien.

The Master: I don't care what you call it, there must be a limit to discussion. I gave Mr. O'Brien a fair opportunity to withdraw his objection. Instead of withdrawing it he insisted upon discussing the matter with me. Therefore the matter is closed.

Mr. Hayward: You are provoked with Mr. O'Brien, and you are going to penalize the de-

29026

fendants in this case, and depart from what you yourself know is the law of the case as to the admissibility of this document, and what you yourself know are our rights in the matter, because you are provoked at Mr. O'Brien, and you are going to penalize him for standing up here and talking to you when you thought he ought not to, and over his shoulder you are striking at the other defendants.

The Master: The statement is not entirely accurate, Colonel Hayward. Mr. Chambers did not withdraw his objection, either.

29027 Mr. Chambers: I was considering it, you have to give me a minute.

The Master: All of Senate Document 47 is out.

Mr. Chambers: I am not through yet. I except to the Master's ruling and procedure, that you received our offer in evidence before Judge Ransom withdrew the exhibit which he had offered in evidence.

The Master: I have not permitted him to withdraw anything, Mr. Chambers. Counsel having failed to withdraw the objection which I overruled, to which an exception was allowed,

29028 and Judge Ransom now consenting that I sustain the objection, I have reversed myself and have done that.

Mr. Chambers: Let us get the record straight. Here is the way the situation appears to me, and this is a part of my objection to it. Mr. Ransom a long time ago offered in evidence this report from Senate Document No. 47. We objected to it at the time, and it was admitted in evidence. You ruled upon our objection and that was closed. You ruled upon it and admitted the exhibit in evidence. Months have come and gone, and we

29929

have worked upon it as an exhibit in the case and prepared our defense upon the supposition that you would admit the rest of the document. We took an exception at that time. Now, on Friday we offered for the second time the rest of this document, and the Master took until today to consider it, and then the first thing this morning passed upon our offer and admitted the document in evidence. I stepped over to have it marked. Before the stenographer actually marked it, Judge Ransom asked to withdraw the original offer.

29930

The Master: And what did I say? I said he couldn't do that.

Mr. Chambers: After you had admitted the document in evidence you said you would require us to withdraw our exception to the original offer, otherwise you would not admit the rest of the document in evidence, and while we were considering it—

The Master: Let me interrupt you. As far as you have gone you have actually stated the situation. I then said, appropos of what had been under discussion, I said, "Of course, by offering this paper you are waiving your objection and exception taken to the original paper." Col. Hayward promptly said, "Of course." Mr. Chambers would not answer, Mr. O'Brien would not answer. Mr. Chambers and Mr. O'Brien got into a discussion about it—

29931

Mr. Chambers: He did not understand what Mr. Ransom had done. It was perfectly proper. This is a serious matter when you are asked to withdraw an objection made at the time.

The Master: I then said to you that you had to withdraw your objection and exception, that

29932

I would not allow Mr. Ransom to withdraw anything while there was an objection on the record.

Mr. Chambers: That had been ruled upon long ago.

The Master: Yes. You insisted that you were entitled to the benefit of an exception and yet entitled to the benefit of putting in proof on top of that exception.

Mr. Chambers: You said the exception failed as a matter of course—

The Master: No, I said you should waive

29933 your objections. I would not take a chance. The objection was there, the ruling had been made, the case is still pending, and I have a right to reverse myself.

Mr. Chambers: But not to our prejudice.

The Master: I was in doubt at the time whether it was material and proper evidence. I let it go in upon Judge Ransom's insistence that as the Supreme Court had made some reference to it it should be allowed to go in. Now he has consented to my sustaining the objection. Mr. O'Brien then undertook to discuss the matter, and I said, "All I want to know is whether you

29934 are still pressing your objection." He would not answer.

Mr. Chambers: He did not understand the situation.

The Master: I have made my ruling.

Mr. Chambers: All I want to say is that by some jugglery or necromancy, or whatever you call it, we have lost the benefit here of a document you have admitted in evidence.

The Master: Let us see about that.

Mr. Chambers: I don't care how it happened, by some jugglery we have lost the benefit of an

29935

important piece of evidence. We are willing to abide by any rule that is reasonable.

The Master: Let us see about that. You offered, of course, this Yalden report because there was in evidence that other document.

Mr. Chambers: No, I think it is secondary evidence, the contents.

The Master: I won't take it on that basis.

Mr. Chambers: I think it is a public document which could be offered in any case.

The Master: Then you make an independent offer of it if you think so.

29936

Mr. Chambers: No. Then he made the other offer.

Mr. O'Brien: Your Honor, as you put that matter up to me, I made an offer of the whole document.

The Master: Weren't you in court from the time that we started to talk?

Mr. O'Brien: Well, when Judge Ransom—

The Master (interrupting): You are not answering my question again.

Mr. O'Brien: Yes, I was in court, you saw me in court, you saw me come in.

The Master: Yes, and you were here from the very start of the discussion.

29937

Mr. O'Brien: I was engaged in a very important conference when Judge Ransom began to talk, a very important conference, trying to arrange matters with some witnesses here, and that is why I did not know just what statement he had made on the record. As a matter of fact when I started in a hurried way, to discuss the matter with Mr. Chambers, my determination was clear up to that time, and that was to offer it, in other words withdraw any exception; but when I started to talk to you and was shut off;

it was not with a view of delaying the matter; but to have it clear when we were withdrawing our exception; just what our position was.

The Master: That is the trouble, you are always trying to make something clear.

Mr. Hayward: Mr. Ransom makes this offer, and he thinks it is going to be helpful to his side of the case.

The Master: Yes.

Mr. Hayward: And that is the reason he makes it and we object to it, and you just waive our objections aside and say no, I am going to let this go in.

The Master: I did not waive it aside.

Mr. Hayward: Then when we want it all in, they think they are going to be hurt by it and then there is an entirely new aspect of the case, which side of this case is going to be hurt, that is all there is to it.

The Master: It would have been perfectly easy for counsel in this case to have waived their objection or withdrawn their objection and had it in, there would have been no trouble about it.

Mr. Hayward: If it is going to help us, then our objections are of no avail, if it is going to help us, but then there is a nice little roundabout way of getting it out.

The Master: I tried to be perfectly fair with you gentlemen, I tried to get you to waive your objection, and you would not do it.

Mr. Chambers: You did not give us three minutes by the clock. Well, anyway, it is a peculiar procedure, I want to say.

Mr. Hayward: If your Honor please, we did not have to expressly waive our objection, I did expressly waive any objection, and so did Mr. Chambers.

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The Master: No, he did not.

Mr. Chambers: Yes, I did. I was coming to it.

Mr. Hayward: Now, wait a minute. Whether we expressly waive it or not, you are enough of a lawyer, and every lawyer in this court room knows that where we offer the rest of this document we could not again urge any exception we took to the admissibility of the first part of it. By a rule of law, by mere operation of the facts themselves, we waive that exception.

The Master: When I first said to you: Of course you are waiving your objection, that was 29942
my view, but as I talked to you it occurred to me that there are some cases that hold that that is not altogether so, that you have the right to insist upon your exception, and a matter being in the record, you have a right to meet it by new matter, and that is why I went a little further and said I wanted you to withdraw the objection, and that is just the way my mind operated.

Mr. Hayward: No, I think the rule is this, that we do not by offering the second portion of it, we do not withdraw the objection, we may have made at the time. We may have made it in good 29943
faith. But later, having availed ourselves of that being in the record to offer another part of it, we do waive our exception. In other words, our objection may have been in good faith at the time, and we may have taken an exception to it in good faith at the time, but having availed ourselves of it to complete the offer by putting in another portion of it, then any exception we took, by mere operation of that act, falls to the ground. I think that is the law, and I think your Honor knows it is, and I think you are just penalizing us.

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The Master: I am not clear about it, and that is why I asked you to withdraw the objection.

Mr. Hayward: You are penalizing the defendants in this great lawsuit because you are provoked at John O'Brien, and for no other reason.

The Master: Because you would not withdraw your objections.

Mr. Hayward: I did withdraw my objections.

The Master: You did, yes; you and I would not have had any trouble here, and we would have been through with it.

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Mr. Chambers: Of course, I take an exception.

Mr. Hayward: If you want to decide this case because you do not like the actions of one counsel, go ahead and decide it. That is all there is to it.

The Master: I cannot force Mr. O'Brien to withdraw an objection, can I?

Mr. Chambers: Will your Honor take this record just as it stands now and submit it to Judge Hand on this question?

The Master: No, certainly I won't.

Mr. O'Brien: Will your Honor have any ob-

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jection to our presenting this matter to Judge Hand?

The Master: Of course I will. There will be nothing to present to any district judge until I am through with this case.

Mr. O'Brien: There may be. Suppose I am aggrieved at your action in this case, will your Honor have any objection to my presenting it?

The Master: I certainly will. You will present nothing until I am through with this case and make my report.

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Mr. O'Brien: Well, I want to state on the record, for the benefit of the record, that at the time that Judge Ransom made his statement to the Court, I was engaged in a very important conversation with Mr. Wellman and Mr. White, representing the Standard Oil Company of New Jersey, the letter of whom was here this morning under subpoena *duces tecum*, and that therefore I did not hear the statement made by Judge Ransom. When the statement was made by the Court to Mr. Chambers and Mr. Hayward, asking them whether or not they would withdraw their exceptions I approached them and learned 29948
of the situation, and had two minutes conversation with them in reference to what action should be taken by the defendants. I proceeded to make a statement to the Court, and in the middle of the first sentence your Honor broke me off and said I should have to do one thing or the other and you then made your ruling. There wasn't any time for me to finish the statement I was making. My mind was perfectly clear as to what I was to do, and that was what I did do—acquiesce with the defendants' attorneys in their position, under the direction of the Court that they would have to do one thing or the 29949
other with respect to the exception. Now, I respectfully submit that your Honor in calm deliberation is not going to make a vital matter in this case depend upon a quick decision of half a second. Your Honor has given it much deliberation since Saturday, I know, and my mind has been taken up with a great many other branches of the case since that time in order to expedite the trial this morning, and also to conduct the business we have before us today, and I was in a very important matter at the time

20950 that the court opened, and I respectfully submit that whatever vexation your Honor may have felt that a prompt, peremptory answer was not given to you when you asked whether the exception was withdrawn, should not be allowed to interfere with important vital matters in this case.

The Master: I do not think it is important or vital.

Mr. O'Brien: Well, it is very important, in my view-point.

The Master: If I had taken it in, as I had
20951 already indicated, I did not think it was at all material, and I was taking it as part of the document.

Mr. O'Brien: Well, now, your Honor, can't you see that you would have to rule out now, if you rule out any of the report, you would have to rule out all? You will have to rule out the Rowland report as well.

The Master: The Yalden report, you mean?

Mr. O'Brien: The Rowland report. You will have to rule out the accountancy exhibits in this case as well.

The Master: Why, the Rowland report is not
20952 in here.

Mr. Chambers: As I understand it, it is.

The Master: It was not read from Senate Document 47.

Mr. Chambers: Well, it is found in here somewhere, isn't it?

The Master: But it was not read from Senate Document 47.

Mr. Ransom: The original Rowland appraisal was produced.

Mr. O'Brien: It was produced as part of this record.

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The Master: It was not read from Senate Document 47.

Mr. O'Brien: It was admitted because it was a part.

The Master: I did not so understand.

Mr. Chambers: Yes, it is part of this, as I understand it.

The Master: It may be in there, but it was not offered and read from that.

The Master: Well, it stands in the same category as the other.

The Master: No, I do not think it is at all vital.

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Mr. O'Brien: Well, your Honor, how would that be admissible except as a part of this record, even with the original document?

The Master: The Rowland appraisal?

Mr. O'Brien: Yes.

The Master: I really do not remember how it was proved.

Mr. O'Brien: Well, I think it was admitted, your Honor, as you recall, it was admitted because it was part of this document, and instead of bringing in the original report of the Senate Record 47, they brought in the original paper covering the Rowland report. Now, if you rule 29955
out the Rowland report, I think you will have to rule out all the Teele exhibits so far as they used figures taken from the Rowland report.

The Master: Where did they get the Rowland report from, did you say?

Mr. O'Brien: They brought in what they say was the original Rowland report.

The Master: Yes.

Mr. O'Brien: And it was admitted because it was part of this Senate Document.

The Master: Not at all.

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Mr. Chambers: Now, may I just say this, that it is beyond my understanding how Judge Ransom can come in here and first off offers to withdraw his original offer of this document, and your Honor rules that he cannot do it.

The Master: Without the consent of all counsel.

Mr. Chambers: Now, secondly, what did he do?

The Master: He did not do anything, but I said—

Mr. Chambers: You asked him if he reconsidered what? His offer of that document. I

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cannot see how he can ask to reconsider our objections to his original offer.

The Master: No. I tried to make it perfectly clear in a memorandum submitted to me by Judge Ransom he suggested that if I reached the conclusion that this had to be received, that he wanted to withdraw it. I got a very strong impression from Judge Ransom's memorandum that he practically conceded that I was right in my point that it was part of Senate Document 47.

Mr. Hayward: Yes, but there was no other

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ruling to it.

The Master: And I gave his suggestion that he could withdraw a paper a good deal of thought, and I reached the conclusion that without the consent of counsel he could not do it, and I so announced. In the prepared opinion that I had written, like speeches and other things, when I prepare them I seldom make use of them, I never use them, I had used this language, "Counsel for complainant further states that if the Master be of opinion that the Yalden report now offered must be received in evidence, the com-

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plainant desires to withdraw Exhibit 398 and waive the Murphy and Robinson report, and have it stricken from the record. Unless the counsel agrees, I do not think that I have any power to permit complainant to withdraw Exhibit 398 from the record." Now, that was my judgment as the result of consideration, and was this morning, and it seemed to me—

Mr. Hayward: Is that still your opinion?

The Master: Yes.

Mr. Hayward: Then I object to his being allowed to withdraw.

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The Master: I have not allowed him to withdraw it.

Mr. Hayward: And you cannot—

The Master: He has consented now to my sustaining an objection.

Mr. Hayward: He cannot do that.

Mr. Chambers: He hasn't any rights in the matter.

The Master: Oh yes, he has.

Mr. Chambers: He has offered the document. How ridiculous. He offers a document in evidence, and we make an objection which is ruled on months ago, and in the discussion of it you sustained our objection.

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The Master: Yes.

Mr. Chambers: The most ridiculous piece of ruling I have ever heard of in any court.

The Master: Now let us see if it is. I am in the trial of a case as counsel, I press an objection, the Judge sustains my objection, and I go back to the office and look it up and think it over, and I feel that I am going to win this case, and before the case is concluded, I say, "I am not going to take a chance on that piece of evidence," and I say to the Court, "I with-

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draw my objection, I don't want any possibility of a doubt on that ruling." Why can't I do that?

Mr. Chambers: That is not the case.

The Master: Why?

Mr. Chambers: Because he is not withdrawing his objection. We objected.

The Master: Can't he consent?

Mr. Chambers: If you hold he cannot withdraw the offer, he cannot do anything about it at all.

Mr. Hayward: Here would be a parallel to your case: Suppose you had sustained this ob-

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jection, suppose you thought when this offer was made that it was not material or relevant or competent, and honestly believing it was inadmissible, had sustained our objection, and we had kept it out and then afterwards we figured out, now maybe Ransom was right and had a right to put that in and we do not want to take any chance on it, and we came back in court this morning or a week ago or month ago and said we want to withdraw our objection to that offer that Judge Ransom made, because we are really afraid it is error to keep it out, that would be parallel to your case that you have just stated, absolutely,

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but not in the present facts. You have no right —you say you are going to let him withdraw this offer if the counsel for the defendants—unless counsel for the defendants object to his withdrawing it. That is your statement.

The Master: I say unless he consents to it.

Mr. Hayward: You said unless counsel consented to withdraw it. Now, one counsel at least makes strenuous objection to his withdrawing and stood pat, to use a slang expression.

Mr. Chambers: Two counsel.

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Mr. Hayward: At least one and a half—Mr. Chambers objected to his withdrawing it.

The Master: That is right.

Mr. Hayward: And I expressly waived any exception or objection. I do not think I have to waive the objection, but I did waive the exception, and I waived both as a matter of fact, and Mr. Chambers concurred with it, and in my opinion one defendant here the Public Service Commission has just as much right to be heard here as the District Attorney.

The Master: Yes, but the trouble is you have to announce it for the District Attorney. He 29966
won't answer a question.

Mr. Hayward: You cannot prejudice me or Mr. Chambers because you take a little petty offense here at Mr. O'Brien standing up and talking back to you, if you want to put it that way, and that is what you are doing, and you cannot afford to do that. Either it was admissible or it was not admissible, and you said it was.

The Master: And I say so yet.

Mr. Hayward: And the manly and fair thing and the only thing that a court should do, and in your heart you know it, is to let this thing stay in, and you are simply keeping it out, not be- 29967
cause you think it is inadmissible, but because you are provoked at John O'Brien, nothing else to it. You cannot cite a parallel case to this in all your long practice; you cannot find one scintilla of law to sustain your position.

The Master: There must be some way of getting an answer from counsel in the trial of a lawsuit. I surely must not sit here all day trying to get an answer from Mr. O'Brien.

Mr. Hayward: I objected to that, and I have a right to make an independent judgment.

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The Master: How long must I sit here in an effort to get an answer?

Mr. Hayward: I do not know how long you must sit here. I have a perfect right—is that true? Suppose that Mr. O'Brien and Mr. Chambers and I in this case had not agreed?

The Master: Yes.

Mr. Hayward: As a matter of fact, your Honor, we have not agreed. I am not revealing any secret when I say that I had a theory of this lawsuit, Mr. Chambers had a theory of this lawsuit and Mr. O'Brien had a theory of this lawsuit, and for the purpose of—really of harmony here, and because the things that we differed in seemed to me to be not material enough to have three lawsuits being tried instead of one, in order that the three of us should get together, one or the other of us has yielded on every proposition down to date. I, because the Public Service Commission was the third defendant, have had my inning last in every instance, and I have tried to take as little time as possible, in most every case Mr. Chambers or Mr. O'Brien has covered the points that I would have covered, perhaps much more fully than I would have thought necessary, and I have only come in here when I thought there was something that they had not covered, don't you see, that I ought to cover, but if we had not taken that attitude of unanimity all the way through, you know that I had a perfect right to appear, as it were, independently for my client, and make independent objections and stand independently upon any rights that I might have. Simply because we have gone along together, you cannot deny me my rights in this case.

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The Master: Well, how can I make a record for you and another record for one of the other defendants?

Mr. Hayward: I have got my rights here, the same as if Mr. O'Brien was not in the court room.

The Master: Let me ask you this, without discussing the number of minutes that have elapsed, suppose this discussion had gone on for an hour and I had permitted Mr. O'Brien to argue this thing for an hour and could not within an hour get from him a statement, must I sit two hours?

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Mr. Chambers: No, you must pass on what Col. Hayward and I do for the other defendants.

The Master: But Mr. O'Brien represents a defendant here.

Mr. Chambers: You cannot penalize us for the attitude or position taken by another defendant.

The Master: You are suffering from the association that you are in. Now, if I cannot get an answer from Mr. O'Brien to a question on that, I have got to rule on it. There has got to be a ruling some time.

Mr. Ransom: May I say, your Honor—

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The Master: I am not sympathetic with you at all, Mr. Ransom.

Mr. Hayward: I do not feel that I am suffering from my association with Mr. O'Brien at all.

The Master: Colonel Hayward is very largely right; if Mr. O'Brien had not fenced around and had answered the question, the record would not be against you at this time.

Mr. Hayward: I do not accept that at all, that it is to my disadvantage that Mr. O'Brien is in the case. I will tell you something about this thing.

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The Master: I am going to change my mind again. Do I understand now that all counsel agree that the exception taken to my ruling in allowing the report in evidence is withdrawn?

Mr. Hayward: My exception is withdrawn, and if your Honor wants it my objection is also withdrawn, made at the time.

Mr. Chambers: Yes. Just to that particular piece of evidence.

Mr. Hayward: That offer.

Mr. Chambers: To that offer of Judge Ransom.

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The Master: Exhibit 398, I think it is.

Mr. Chambers: We ought to identify it.

The Master: I do not want anybody to get any impression from this record that I made a ruling out of pique. I did it because I could not get a withdrawal of the objection and exception. If all counsel will withdraw it I will take it now. Exhibit 398 was the application.

Mr. Chambers: Was it Exhibit 398?

The Master: Yes. Do I understand the objection to that exhibit and exception taken on it are withdrawn by all counsel?

Mr. Chambers: I withdraw my objection.

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Mr. Ransom: The record has not yet shown Mr. O'Brien's withdrawal of his exception.

Mr. O'Brien: No, I do not mean to give that *de profundis*.

The Master: That has got to stop, Mr. O'Brien. The next time I make a ruling and I cannot get an answer—

Mr. O'Brien: I will use a megaphone if you want.

The Master: You do not have to use a megaphone.

Mr. O'Brien: I said I concurred in the withdrawal.

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The Master: The record will show all counsel for the defendants will withdraw any objection made and exception taken to the admission in evidence of Exhibit 398, that exhibit now remaining in the record. I shall allow the Yalden report to be marked as a defendants' exhibit. It has already been marked for identification and it will take the exhibit number that it had marked for identification.

I want counsel to understand I am doing it because I do not want any impression to go forth that I am making a ruling out of pique. I made it because I could not get a withdrawal of the ob- 29978
jection and exception. It having been withdrawn I will allow the Yalden report in. I want to call attention to the fact again that I am still of the opinion, and will probably remain of the opinion, that the Yalden report is not material to this issue. I am still of the opinion that the United States Supreme Court decision requires me to start on the basis of invested capital, with a capital authorized issue, and ratified by the State of New York in 1884, of about $30,000,000. I am giving you that for what it may be worth.

Mr. Chambers: How about the Rowland report? 29979

The Master: What do you mean?

Mr. Chambers: That is in the same position.

The Master: It is in evidence.

Mr. Chambers: They did not call Rowland.

The Master: It was conceded that that was a genuine document. The Rowland report is explanatory of the capitalization.

Mr. Chambers: I do not remember any concession that it was a genuine document.

The Master: Yes, there was.

Mr. Chambers: No.

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Mr. Ransom: The record speaks for itself. I want to place on the record my objection to the receipt of this Yalden report.

The Master: Before it is marked as an exhibit, take Judge Ransom's statement.

Mr. Ransom: I object on the grounds which have in part been previously indicated—that this Yalden report is not a part of the action of the majority of the Legislative Committee, it was not a part of the admission against interest made by the legislative authority of the State of New York with respect to the value of franchises and

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rights of the complainant gas company upon consolidation; that it is not a part of the report, but is merely an exhibit which was apparently offered in connection with some of the testimony of one of the witnesses before the Senate Investigating Committee; that the Senate Investigating Committee was not a judicial tribunal, did not conduct a judicial inquiry into facts, did not make findings of fact or any other determination with respect to property values in a manner known as judicial procedure; that this Yalden report is in no way independent or competent or probative evidence upon any question of the value or cost

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of the physical property at the time of consolidation or at any other time; that the witness Yalden was never subjected to cross-examination before any judicial tribunal with respect either to his testimony or his report, and that there is no evidence before the court that insofar as Mr. Yalden's reported analysis of books or records of companies prior to the consolidation in November, 1884, is concerned, what he sets forth, as though he had found it in such books, was contained in such books, or that he correctly transcribed it or set it forth.

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On the further ground that Mr. Yalden did not even pretend to analyze or summarize or report concerning the books and accounts of all the companies which were merged in the consolidation in 1884, and that the report could have no probative value because of its incompleteness.

The report was marked Defendants' Exhibit AA47 in evidence.

Mr. Ransom: Your Honor ruled adversely on an application which I made to withdraw the exhibit. I take an exception on that, because I believe it is within the clear rights of the complainant. In view of the doubts expressed by 29984
your Honor at the time Exhibit 398 was offered, and the doubts which also were expressed by counsel for the complainant, I think we had an absolute right to withdraw and I except to your Honor's refusal to allow the withdrawal.

I also except to your Honor's refusal to sustain the objection urged by the Assistant Corporation Counsel and other defendants to the receipt of Exhibit 398, counsel for the complainant having, upon reconsideration of the objection and exception taken by Mr. O'Brien at that time, consented in open court to the sustaining now the objection made by Mr. O'Brien and the exception 29985
taken by him at the time Exhibit 398 was received in evidence. Upon the request of the complainant to withdraw Exhibit 398 and the consent of the complainant to the sustaining of the objection previously made, I move to strike Exhibit 398 from the record at this time.

The Master: Motion denied.

Mr. Chambers: I object to that—have objected.

Mr. Ransom: Exception to all rulings.

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Mr. Chambers: From this document, this same Senate Document, Vol. IV, No. 47, 1886, I offer the testimony found on pages 288 to 296, inclusive, 338 to 347, inclusive, 359 to 375, inclusive, 433 to 441 inclusive, 455 to 468, inclusive, 494 to 497, inclusive, 435 to 658, inclusive, and 778 to 781, inclusive.

Mr. Ransom: I object to that. That only tends to further demonstrate the anomaly, and what I believe to be the incorrectness, of the ruling which your Honor has made this morning. The idea that because some member of the minority

20087 of a Legislative Committee—whatever may be said about him, he being gone perhaps we may be charitable—by having witnesses called before the Legislative Committee and then presenting a report, a solitary report, and incorporating with his report the testimony of those witnesses, and incorporating with the testimony of those witnesses the exhibits which they prepared in connection with the testimony in proceeding where the witnesses and the exhibits were subject to no rules of evidence whatsoever, may thereafter make that testimony and those exhibits competent evidence in a court of law, against a com-

20088 plainant which never had the right of cross-examination of the witnesses or examination of the exhibits, seems to me carrying the rule beyond anything which has ever been conceived of.

The Master: You object to it on the ground it is incompetent, irrelevant and immaterial.

Mr. Ransom: It is incompetent, irrelevant and immaterial, and of no binding force.

The Master: Objection overruled. The testimony will be received as part of the Senate Document No. 47, 1886; it will be considered in evidence with an exhibit number and it need not be marked.

The same was considered marked Defendants' Exhibit AA49.

The Master: They are received in evidence and considered as an exhibit. Have you anything else, Mr. Chambers?

Mr. Chambers: Yes, sir, just a second.

Mr. Ransom: May I ask whether these documents are in any way received as proof of their contents, or merely in explanation of the portion of the testimony put in on the question of the value of franchises and rights?

The Master: I am taking whatever there is in 29990
Senate Document No. 47 in explanation of the part which is offered.

Mr. Ransom: But not as independent proof of the facts on other issues?

The Master: That is the way I have taken it.

HERMINE PEITER, called as a witness by the defendants, was duly sworn and testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. What is your business, Miss Peiter? 29991

A. I am secretary to the sales manager of The Texas Company.

Q. And who is the sales manager?

A. Mr. C. E. Woodbridge.

Q. Mr. Woodbridge?

A. Yes.

Q. And he is out of town, is he, at the present time?

A. Yes.

Q. You were served with a subpoena, were you, to bring certain documents here in court?

A. I was.

Q. Certain contracts?

A. Yes.

Q. And have you the contracts here?

A. Only such as I could produce.

Q. What ones have you?

A. I was specifically requested to bring the contract of October 18, 1907. That contract I cannot produce because our early files were destroyed by fire, but I have a letter, a copy of a letter which has reference to the said contract and contains some facts relating to it. I will produce that letter with a copy of it so
20003 that you can retain whichever you wish.

Q. Any other contracts?

A. Then I was asked to produce any other contracts between 1904 and 1920, and the only other I can produce is a contract dated October 17, 1916, between The Texas Company and the Kings County Lighting Company. This is a cancelled contract.

Q. Where are the other contracts?

A. Apparently we have no other contracts for gas oil with gas companies since 1904.

Q. Than these two?

A. Those are all that we can produce, and practically all that we have so far as we can now discover.

20004 Q. All that was made, you think, in this territory?

A. All that was made. The top is the copy and underneath is the original.

Q. You say that you did not produce any more because no others were made?

A. No others were made.

Q. Then these two that you mention cover all the contracts for oil that were made between those dates?

A. Yes.

Q. Here in this territory?

A. Yes. We assume you meant New York territory and gas company contracts.

Q. What contracts were burned up in the fire, do you know?

A. No, we have no record. We only know the files were burned, and if there were any contracts in that period they would have been burned up.

Q. So that you are unable to produce them if there were any others?

A. Unable to produce them, yes.

Q. Because they were destroyed?

A. Yes.

Q. I show you a paper bearing date October 18, 1907, between The Texas Company and the Kings 29996
County Lighting Company, and ask you would the original of that have been destroyed in the fire?

Mr. Ransom: I object to the question, "Would it have been destroyed?" It does not appear that this witness would have known anything about it.

The Master: Objection sustained. You may ask the witness whether she knows the fact there was a contract like that and whether it was destroyed in the fire.

A. I am not familiar with the terms of the contract of October 18, 1907. I could not possibly identify a copy of it.

Q. But you could not produce the original of that. 29997
You did not find the original of that for the reason stated?

A. Not of that date.

The Master: Either for the reason you have stated, that it was burned in the fire, or there never was any?

The Witness: There was one. The letter I produce shows there was a contract.

The Master: I see.

Q. The letter you produce relates to this very contract, does it not?

A. It relates to a contract of that date.

29998 Eugene H. Rosenquest, Direct.

Q. Would The Texas Company have a copy of this contract of October 18, 1907, which you could identify?

A. Would they have it? Not if it were destroyed. I meant to convey all files were destroyed; not alone original contracts, but all files.

Q. The Kings County Lighting Company would have a contract?

A. They would have the duplicate original. The contracts were always exchanged in duplicate.

29999 The Master: I think you ought to face the witness when you ask a question, Mr. Chambers. I do not think it is right to have your back to the witness this way.

Mr. Chambers: That is all. Will you wait in the court room a few minutes until I get the original contract. Any questions?

Mr. Ransom: No.

Eugene H. Rosenquest, called as a witness in behalf of the defendants, being duly sworn, testified as follows:

30000 Direct-examination by Mr. Chambers:

Q. You are the President of the Bronx Gas & Electric Company, Mr. Rosenquest?

A. Yes, sir.

Q. And have been for some time?

A. Yes, sir.

Q. The Bronx Gas & Electric Company was subpoenaed to produce here certain papers?

A. Yes, sir.

Q. Have you the papers called for in the subpoena?

A. Why, I have some of them. I have all that I could find after making diligent search.

Q. They are contracts between your company and the Standard Oil Company?

A. Yes, sir.

Q. Did you buy your oil from any other companies except the Standard during the period covered by the subpoena?

Mr. Ransom: I object unless the question is limited, to which "Standard."

The Master: What is that?

Mr. Ransom: Which Standard?

Mr. Chambers: The Standard Oil Company of New York. 30002

A. The Standard Oil Company of New York, yes, sir.

Q. That is the only company with whom you dealt?

A. No, we have bought from the Gulf Refining Company.

Q. Under contract?

A. We have one contract with the Gulf Refining Company.

Q. And have you that?

A. Yes, sir.

Q. Will you produce all these contracts that you have?

A. I can produce contracts back to 1908. 30003

Mr. Ransom: Just a moment. I object to—

Q. Continue. All of the contracts back to 1908?

A. Yes, sir.

Mr. Ransom: I object to the production, on the ground that these contracts are incompetent and immaterial, not being on any issue in this case.

The Master: We have not got to that point yet. He has not produced them.

The Witness: I can read off the contracts I have here—the dates of them.

Q. Yes, what contracts you produced here; read them right into the record.

Mr. Ransom: May the record show my objection?

The Master: I suppose it does.

Mr. Ransom: I object to the reading of any portion of the contents of the contracts, on the ground it is incompetent.

The Master: He is not reading anything in the contracts, but just giving the dates—the names of the contracting parties and the dates.

30005 Mr. Ransom: Exception.

By the Master:

Q. These are all contracts between the Bronx Company and the oil company, is that right, Mr. Rosenquest?

A. That is right; yes, sir.

Q. Just give the name of the company and the date of the contract.

A. Standard Oil Company of New York, date of contract 23rd day of July, 1908; the same oil company, 8th day of November, 1911; the same company, the 10th day of September, 1914; the same company, 2nd day of October, 1915.

30006 Mr. Ransom: October 2nd?

The Witness: October 2, 1915; the same company, the 12th day of December, 1917; the same company, the 26th day of November, 1918; the Gulf Refining Company, the 12th day of May, 1919; the Standard Oil Company of New York the 20th day of December, 1919. That is the last contract.

By Mr. Chambers:

Q. Those cover all the oil contracts between your company and oil companies for the sale of oil, from 1908 to 1919, that you know of?

A. That I know of; yes, sir.

Q. Have you any objection to our having these for a minute to see what ones we care to offer in evidence?

A. (Witness hands counsel papers).

Q. Mr. Rosenquest, take this contract that you produced, dated July 23, 1918. Is that your signature at the bottom (indicating)?

A. That is my signature; yes, sir.

Mr. Ransom: 1918 or 1908?

Mr. Chambers: 1908. Did I say 1918?

The Witness: 1908.

Q. That is your signature, is it?

A. That is my signature; yes, sir. 30008

Q. And the other signature?

A. That is Mr. Charles M. Higgins' signature.

Q. You know Mr. Higgins' signature?

A. I know it very well.

Q. And that is his genuine signature?

A. Yes, sir.

Q. He is the manager of the Standard Oil or signed up for the Standard Oil?

A. He signed up for it; yes, sir.

Q. The contract dated November 8, 1911, is that your signature at the bottom (indicating)?

A. It is.

Q. And Mr. Higgins' signature? 30009

A. I know it to be; yes, sir.

Q. The contract for September 10, 1914, is that your signature at the bottom (indicating)?

A. It is.

Q. And Mr. Higgins'?

A. As I know it to be, yes.

Q. The contract dated October 2, 1913, is that your signature at the bottom (indicating)?

A. It is.

Q. And Mr. Higgins'?

A. As I know it to be.

Q. The contract dated December 12, 1917, is that your signature (indicating)?

A. Yes, sir.

Q. And Mr. Higgins' signature?

A. Yes, sir.

Q. The contract November 26, 1918, are those the signatures of Mr. Higgins and yourself?

A. Yes, sir.

Q. The contract dated May 12, 1919, between your company and the Gulf Refining Company, is that your signature at the bottom?

30011 A. Yes, sir.

Q. And the other signature, whose is that?

A. That is Mr. Lyon's.

Q. Edward—it looks like "Edw. A. Lyon"?

A. Edward Lyon.

Q. Who is he?

A. He is in charge of the Gulf Refining Company of New York.

Q. Is that his signature?

A. I take it to be, yes, sir. I did not see him sign it.

Q. How about Mr. Nutty?

A. I do not know.

30012 Q. You do not know that?

A. I do not know it.

Q. This is the duplicate original that was delivered to you?

A. That is the duplicate original that was delivered to me; yes, sir.

Q. And the contract dated December 20, 1919, between the Standard Oil and your company, is that the signature of Mr. Higgins at the bottom?

A. It is.

Q. And yours?

A. And mine.

Q. Now, Mr. Higgins, whenever he signed these contracts signed for the Standard Oil Company of New York, while you signed for the Bronx Gas & Electric Company?

A. Yes, sir.

Mr. Chambers: I now offer in evidence, Mr. Rosenquest having identified the contract, contract dated July 23, 1908, between the Bronx Gas & Electric Company and the Standard Oil Company of New York.

Mr. Ransom: I object on the grounds that have been previously stated with respect to the offer 30014
of other oil contracts.

The Master: Do you offer all of the Bronx Company's contracts?

Mr. Chambers: I was offering them up to 1915, for which we prepared a table.

The Master: How about the contracts after 1915?

Mr. Chambers: Our table does not cover that.

Mr. Ransom: I object. These contracts are not a competent way of proving any market price of oil or reasonable price of oil at any time pertinent in this case.

The Master: Objection sustained. 30015

Mr. Chambers: Will your Honor state upon what grounds?

The Master: I have already explained it in connection with the offer of other contracts. Call Mr. Higgins.

Mr. Chambers: I have proved his signature there.

The Master: Call Mr. Higgins and have him testify what he was selling oil for to this and to other companies.

Mr. Chambers: There was really no market price, no fixed set market price for oil, its only

30016 evidence being what these companies paid for it, and the prices made.

The Master: I will sustain the objection. Call Mr. Higgins.

Mr. Chambers: I ask your Honor then that you take sufficient of that exhibit so we may know what the paper was that was offered.

The Master: You have sufficiently stated.

Mr. Chambers: I ask your Honor to state in detail the grounds of your ruling?

The Master: I will state nothing further than I have.

30017 Mr. Chambers: I except to the ruling. I ask that that paper be marked for identification.

Mr. Ransom: I object to that under the ruling made the other day.

The Master: No, I will permit him to mark it for identification.

Mr. Ransom: Exception.

Paper marked Defendants' Exhibit AA50 for identification.

Mr. O'Brien: Will your Honor permit the price to be recorded?

The Master: Certainly not.

Mr. O'Brien: For your own consideration.

30018 You can rule it out afterwards.

The Master: No.

Mr. Chambers: For the Appellate Court if there is one.

The Master: No, the objection is sustained.

Mr. Chambers: I expect to offer all these contracts that I can get hold of.

The Master: I expect you to call Mr. Higgins or some other responsible officer of this company to testify what he was selling oil for, and in connection with that testimony you can use these exhibits, but not otherwise.

Q. Mr. Rosenquest, will you look at this exhibit, and after looking at that, are you able to say at what price you were purchasing oil from the Standard Oil Company of New York at that time in quantities of 2,000,000 gallons?

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Can you say what was the price of gas oil on or about July 23, 1908?

Mr. Ransom: I object to that.

The Master: You mean by that to inquire of 30020
Mr. Rosenquest if he knew what gas oil was selling for generally in the market, or what his particular company managed to get some particular oil for?

Mr. Chambers: I am going to ask him if he knows what gas oil could be bought for in the open market at that time in quantities of 2,000,000 gallons?

The Master: 2,000,000 gallons?

Mr. Chambers: Yes.

Mr. Ransom: I object. The witness has not been qualified on that. If counsel for the Attorney General qualifies him, then we will have a differ- 30021
ent situation.

The Master: Yes, I think you had better qualify Mr. Rosenquest's knowledge of general conditions.

Q. Mr. Rosenquest, how long have you been president of the Bronx Gas & Electric Company?

A. 12 or 15 years.

Q. And you have been making gas all this time?

A. Yes, sir.

Q. And your company manufactures some water gas?

A. Yes, sir.

30022 Eugene H. Rosenquest, Direct.

Q. And in the manufacture of water gas you use gas oil?

A. Yes, sir.

Q. And you buy gas oil in the market?

A. Yes, sir.

Q. And you are still buying gas oil?

A. Yes, sir.

Q. And you were in 1908 buying gas oil?

A. Yes, sir.

Q. And prior to 1908 you were obliged to buy gas oil in the market?

30023 A. Yes, sir.

Q. How do you buy your oil, by private negotiation or public bidding?

A. Private negotiations.

Q. Private negotiations?

A. Yes, sir.

Q. Did you endeavor to obtain prices from the different companies?

A. I did.

Q. As a result of that endeavor to obtain and purchase gas oil in 1908, July, 1908, can you tell me what you found that you could purchase gas oil for in the market, what price?

30024 A. I don't remember.

Q. Can you by refreshing your recollection from this exhibit?

A. I can.

Q. Will you please look at that and then say?

The Master: Say what? What he could buy it for? I won't take that.

Mr. Chambers: What he could purchase it for in the market.

The Master: You can frame the question, what was the market price of gas oil, not what he could buy it for.

Q. Can you say after looking at that?

The Master: What was the market price for gas oil in 1908?

The Witness: I can't tell you what the market price was; I know what we paid for it.

The Master: Do you know what other people could buy it for?

The Witness: No, sir.

Q. Was there a market price for gas oil, a fixed market price at that time, 1908?

A. I don't think so.

Q. That is not the way the commodity is bought 30026
and sold, is it?

A. Well, I don't know whether you call it a market price. I know I go out and buy oil at the cheapest price I can buy it for, but I don't think there is a regular market price for gas oil.

Q. At what price were you able to buy it at that time from the Standard Oil Company of New York?

Mr. Ransom: I object to that.

The Master: I think in view of Mr. Rosenquest's statement that there was no market, or regular market price, but that it was simply a question of what you could buy it for I will let him state what he was able to buy some for. 30027

Mr. Ransom: Exception.

A. I bought this particular lot of oil on the 23rd day of July, 1908, amounting to 2,000,000 gallons. to be delivered as we wanted to use it, for 3.1 cents a gallon.

Q. How long a period were deliveries to cover?

A. Until we used the oil. We used about, as I recall it, about 70,000 gallons, 70,000 to 75,000 gallons a month.

Mr. Chambers: Now, I offer the contract in evidence.

30028 Eugene H. Rosenquest, Direct.

The Master: No.

Mr. Chambers: The same contract heretofore described.

The Master: I am not interested in this contract. He has given us the price.

Mr. Chambers: Exception.

The Master: What more do you want?

Mr. Chambers: I think the contract is the best evidence. I don't agree with the Master on his idea of the law.

Q. What was the quality of the oil that you have
30029 spoken of, Mr. Rosenquest, that you purchased for 3.1 cents a gallon?

A. It was what the Standard Oil Company of New York called their gas oil. It ran about 28 to 34 gravity.

Q. And where were deliveries to be made?

A. At our works, Unionport, Westchester Creek.

Q. That was the price delivered at your works?

A. That wa. the price delivered, yes, sir.

Q. Now, the conditions of payment, do you remember that? If not, can you refresh your recollection by the agreement?

A. The condition of payments?

30030 Q. Yes.

A. Well, the Standard Oil Company usually requires payment in 30 days; otherwise they add interest to the account.

Q. And that was the terms of payment for this amount you have spoken of?

A. As I recall it was the terms of payment. They have always been about the same.

Q. Now, in 1911, was there a market price, a fixed market price for gas oil that you know of?

A. Not that I know of.

The Master: Was there a range that you know of?

The Witness: Why, your Honor, I can't say there was a range. Before buying oil I would do the best I could, I would inquire around to see what the price of oil was, how it was running, but it fluctuated from day to day and week to week. It is pretty hard to keep track of it.

The Master: Has the price of gas oil any relation at all to the quoted price of crude oil in various sections?

The Witness: I don't think so.

Q. I show you contract dated November 8, 1911, between your company and the Standard Oil Company, which you have identified. After looking at that are you able to say, using that to refresh your recollection, what you were able to purchase oil for in quantities of two and three million gallons at that time? 30032

Mr. Ransom: I object to that as not competent or a probative measure of the price at which gas oil could be bought.

The Master: I will take it in view of the testimony, as some evidence of what oil was being bought and sold for.

A. This particular quantity of oil was bought for three cents a gallon. 30033

Q. How many gallons.

A. 2,000,000 gallons.

Q. With an option for another million at the same price?

A. With an option for another million at the same price, yes.

Q. And delivery was to be made where?

A. Delivery to be made at our works as required.

Q. And the terms were?

A. The same as usual, 30 days, with interest added thereafter.

Q. Speaking of this other quantity in the last contract, was that oil delivered to you at that price?

A. Yes, sir.

Q. And this quantity I just asked you about, was that delivered at that price?

A. Yes, sir.

Q. Now, the quality of this oil you have just mentioned here in 1911?

A. As I recall, 28 to 34 gravity.

Mr. Chambers: I now offer in evidence contract dated November 8, 1911, between the Standard Oil Company of New York and the Bronx Gas & Electric Company, identified a few minutes ago by Mr. Rosenquest.

30035

Mr. Ransom: Objected to on the grounds previously stated.

The Master: Objection sustained.

Mr. Chambers: Exception. I ask that it be marked for identification.

Contract marked Defendants' Exhibit AA51 for identification.

Q. Was there a market price for gas oil that you know of with a gravity of 28 to 34 in September, 1914, a fixed market price?

30036

A. No, sir, there was not.

Q. Are you able to say what you could purchase gas oil of that gravity for at that time, September, 1914?

Mr. Ransom: I make the same objection as previously urged.

The Master: Same ruling.

Mr. Ransom: Exception.

A. I can tell you the price I paid for it at that time.

Q. By refreshing your recollection?

A. By refreshing my memory from this contract.

Q. Will you please look at the contract and then state, Mr. Rosenquest?

Mr. Ransom: I make the same objection.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. I paid 3 1/2 cents for 2,000,000 gallons to be delivered as required, 28 to 34 gravity oil, 30 days, with interest thereafter.

Q. Was that oil delivered to you at that price?

A. It was.

Q. And it was to be delivered at your works at Unionport? 30038

A. Yes, sir.

Q. Where is Unionport, Mr. Rosenquest?

A. Borough of the Bronx.

Q. New York City?

A. Yes, sir.

Q. With the Greater City of New York?

A. Yes, sir.

Q. Is it on the water?

A. On the water, on Westchester Creek. The deliveries are made by water.

Q. And the boats can come in there from the sound?

A. Yes, sir. 30039

Q. Up the creek?

A. Yes, sir, deliveries are made by water.

Mr. Chambers: I now offer in evidence contract between the Standard Oil Company and the Bronx Gas & Electric Company, dated September 10, 1914, which has been previously identified by Mr. Rosenquest.

Mr. Ransom: Objected to upon the grounds previously stated.

The Master: Objection sustained.

Mr. Chambers: Exception. I ask that it be marked for identification.

30040 Eugene H. Rosenquest, Direct.

Paper marked Defendants' Exhibit AA52 for identification.

Q. Now, Mr. Rosenquest, you have these numbers I see, 1, 2, 3, 4, 5, 6, 7 and 8. Have you any objection to our having these a short time if we give you a receipt for them?

A. No, sir.

Q. No objection?

A. No objection.

Mr. Ransom: Why don't the defendants go ahead and put in the rest of them? What are
30041 they afraid of about the years that relate to this case?

Mr. Chambers: I will sign the receipt for them, Mr. Rosenquest. That is all.

Mr. Ransom: May I have them (taking up papers)?

Mr. Chambers: No, I ask the Master to direct him to hand them back to me. None of them have been offered in evidence.

The Master: Hand them back.

Mr. Ransom: I now call upon the Attorney General to deliver to me these contracts for the purposes of cross-examination.

30042 The Master: Have you any objection, Mr. Rosenquest, to Mr. Ransom using these papers?

The Witness: I have not.

The Master: Hand them to Mr. Ransom. Since when did you get any exclusive right to papers belonging to some gas company? He can look at them to his heart's content, just as you have.

Mr. Chambers: You didn't enforce that rule against the defendants. Let us be fair about it. When he has brought a paper in here you have ruled that if we looked at it it was offered in evidence. I except.

The Master: Give Mr. Ransom those papers.

Mr. Ransom: I want them all.

The Master: I said all of them.

Mr. Chambers: They have not been marked for identification.

The Master: I said all the papers produced by Mr. Rosenquest, the same as if Mr. Ransom had subpoenaed them himself.

Mr. Chambers: I take an exception. I think when a rule is made here it applies to the defendants as well as to the complainant. Fairness is fairness. 30044

CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Rosenquest, at all of these times concerning which you have been interrogated by Mr. Chambers, you made an effort to get for your company the best price you could?

A. I certainly did.

Q. From the Standard Oil Company of New York, or the Gulf Refining Company, or any other company?

A. Yes, sir.

Q. And it is your belief that you did get the best price that you could?

A. I think I got the best price I could. 30045

Q. Taking into account the quantity that you needed?

A. Yes, sir.

Q. Now, in the fall of 1919, and particularly in the month of December, did you try to ascertain the price and get the best possible price for a supply of gas oil during 1920?

A. I did.

Mr. Chambers: I object to that. I did not ask him anything about that year.

The Master: Objection overruled.

30046 Eugene H. Rosenquest, Cross.

Mr. Chambers: Not proper cross. Exception.

The Master: Was there any more of a market price in 1919 than in 1911 or 1914?

The Witness: Nothing that we could discover.

Q. Conditions were the same as in those other years?

A. Very largely, sir.

Q. Did you try to get the best possible price you could from the Standard Oil Company of New York, and from other companies at that time?

A. I did.

30047 Q. Now, what was the best price that you could get for 1920 delivery, for gas oil in the quantity desired by you?

Mr. Chambers: I object to that upon the ground it is incompetent, irrelevant and immaterial and not proper cross-examination.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. The best price I could get was the price in that contract, 7.55 cents.

Q. 7.55 cents per gallon?

A. 7.55 cents per gallon.

Q. And that was for gas oil 24 to 32 degrees

30048 gravity Beaume?

A. Yes, sir.

Q. And delivered, as you have stated before?

A. Delivered at our works.

Q. And that was for a 600,000-gallon quantity?

A. Yes, sir, approximately, covering about six months.

Q. And during what period was that to be delivered, if you remember?

The Master: He said about six months.

The Witness: Six months.

Q. The first six months of 1920?

A. Yes, sir.

Q. The best price you could get was from the Standard Oil Company of New York?

A. Yes, sir.

Q. Did any other companies quote you prices?

A. Yes, sir.

Q. Were those higher or lower than 7.55 cents per gallon?

A. Higher.

Q. Will you state what other prices were quoted to you?

Mr. Chambers: Objected to; incompetent, irrelevant, immaterial, not proper cross. 30050

The Master: Objection overruled.

Mr. Chambers: Exception.

A. There was only one. We only received one other quotation, and that was from the Gulf Refining Company.

Q. Will you state what price that was?

A. That price was 7.75 cents.

Q. Did they say they would be willing to deliver this quantity of oil at 7.75 cents?

Mr. Chambers: I object to that as being incompetent.

The Master: Overruled.

Mr. Chambers: Exception. 30051

A. Yes, sir.

Q. Could you get any other company to quote you a figure at which they were willing to deliver gas oil during 1920?

A. I could not.

Q. In the spring of 1919, more particularly in the month of May, did you have occasion to try to get a price on 600,000 gallons of gas oil then?

A. Yes, sir.

Q. And did you try to get the best price you could from various companies?

A. I did.

30052 Eugene H. Rosenquest, Cross.

The Master: Was there any fixed market or any certain range whatever?

The Witness: No, sir.

Q. Was the best price you could obtain then from the Gulf Refining Company?

Mr. Chambers: I object to that as incompetent, irrelevant, immaterial.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. It was.

Q. And at what price was the Gulf Refining Com-
30053 pany willing to make a contract for 600,000 gallons?

Mr. Chambers: I object to that as not proper cross.

The Master: Overruled.

Mr. Chambers: Exception.

A. As I recall, it was 5.75 cents.

Q. And that was water delivery?

A. Water delivery, the same as usual.

Q. And was this quantity of 600,000 gallons under a contract with the Gulf Refining Company delivered by them?

A. It was.

Q. And paid for by you at 5.75 cents?

30054 A. We are paying for it.

Q. Still paying for it?

A. Yes, sir.

Q. Now, Mr. Rosenquest, in the fall of 1918, and more particularly in the month of November, did you have occasion then to try and make the best possible arrangement you could for 700,000 gallons of gas oil?

A. Yes, sir.

Q. And there wasn't any market price in the sense that you say there isn't a market price? The situa-

tion was then the same as in the other years, so far as any market price?

A. Yes, sir.

The Master: As I understand it, during all of these years the situation with reference to anybody being able to locate quoted figures for gas oil was the same, there wasn't any regular quotation for gas oil?

The Witness: Your Honor, since I have been in the business, for about twenty-four years, I have experienced the same difficulty in buying gas oil. 30056

The Master: You cannot look at a trade paper and find out what gas oil is quoted for?

The Witness: No, sir.

Q. There is no exchange, you have to deal with individual sellers?

A. Yes.

The Master: You will find quotations for crude oil in the various fields?

The Witness: Yes, sir.

The Master: But you won't find any quotation for gas oil?

The Witness: I never found any.

The Master: Can you tell us why that is so? 30057

The Witness: I cannot tell you; I am not an oil man.

Q. In November, 1918, when you wanted this 700,000 gallons, did you seek to obtain from different companies the best price you could?

A. I did.

Q. What was the best price you could obtain at that time?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, unless he offers the contract in evidence.

30058 Eugene H. Rosenquest, Cross.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. The best price at that time was 7.8 cents for 28 to 34 gravity oil delivered.

Q. And you made a contract on that basis?

A. I did.

Q. Do you recall whether you were able to get any other bids at that time?

A. I know I asked for other bids, inquired from different companies for their prices, and that was the best price and the best bargain I could make at that
30059 time.

Q. And the lowest price?

A. At the lowest price.

Q. Do you recall now whether you did have any other and higher bids?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Chambers: Exception.

A. I cannot recall.

Q. Did you have any other bids?

The Master: He says he cannot recall.

The Witness: I am just looking up to see if
30060 I can refresh my memory on it. What time was that contract?

Q. This contract was made on the 26th of November, 1918?

A. Oh, November, 1918, no, I cannot recall.

Q. At the time that you got the price of 5.75 cents from the Gulf Refining Company, and subsequently made the contract on that basis, did you have any other bids at that time?

A. We had, yes, sir.

Q. In the spring of 1919?

A. Yes, sir.

Q. Do you recall at what figures?

A. I cannot recall the figures, but I can recall the fact that the Gulf Refining Company's was the lowest figure that was bid at that time.

Q. You had other bids for it?

A. Yes, sir.

Q. But they were higher?

A. They were higher.

Q. Do you recall how much higher?

A. Well, between a quarter of a cent and half a cent a gallon. What date was that?

Q. The 12th of May, 1919? 30062

A. No, I haven't got that.

Q. You do not recall?

A. No, I do not recall, but I recall they were higher.

Q. With respect to the situation at the end of December, 1918, and the quotation of a price of 7.8 cents per gallon, was that subject to increase or reduction according as transportation costs were advanced or lowered?

A. Subject to an increase.

Q. And are you able to refresh your recollection with this letter of January 20th, 1919, to state whether that price was advanced?

A. I recall that it was advanced, yes, sir. 30063

Q. To 7.84 cents per gallon?

A. Yes, sir.

Q. And that advance became effective February 8, 1919?

A. Yes, sir.

Q. And continued applicable to the remaining deliveries under that arrangement of November, 1918?

A. Yes, sir.

Q. In October, 1915, did you have occasion to seek the best possible price for 1,000,000 gallons of gas oil?

A. Yes, sir.

30064 Eugene H. Rosenquest, Cross.

Q. To be delivered during a period beginning November 1, 1916?

A. Yes, sir.

Q. Did you endeavor to obtain the best price possible from different companies?

A. I did.

Q. What was the best price that you could obtain, if you can recall, or if you can refresh your recollection so that you can state?

A. The best price that I could obtain about the time this contract was made was five cents a gallon.

30065 Q. Could you get other bids from other companies for even this small quantity of oil at that time?

Mr. Chambers: I object to the characterization.

A. I asked for bids, but that was the best one I received.

Q. Did you get bids from other companies?

A. As I recall it, I did.

Q. But higher?

A. They were higher.

Mr. Chambers: I object to that, let the witness answer.

Q. In the fall and winter of 1917, and particularly

30066 in the month of December, 1917, did you have occasion to seek bids for 1,225,000 gallons of gas oil?

A. Yes, sir.

Q. This was to be gas oil of 28 to 34 degrees gravity?

A. Yes, sir.

Q. And did you get the best possible price you could from different companies?

A. I did.

Q. And what was the lowest price at which any company was willing to give you 1,225,000 gallons of gas oil?

Mr. Chambers: I object to the question as not proper cross.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. 6.97 cents.

Q. That was subject to increase if transportation rates went up?

A. Yes, sir.

Q. And did you make a contract on that basis?

A. I did.

Q. And did the transportation rates go up?

A. I cannot recall. 30068

Q. I show you a letter which you have produced, dated May 15, 1918, and ask you whether there was not, by reason of increased cost of transportation, an advance in price from 6.97 to 7.03 cents per gallon beginning June 15, 1918?

A. Yes, sir.

Q. In this price of 7.55 cents for gas oil during the first six months of 1920, that was not for oil of 28 or better gravity Beaume, was it?

Mr. Chambers: I object to it as incompetent.

The Master: Overruled.

Mr. Chambers: Exception.

A. No, sir, it was not. 30069

Q. That was as low as 24?

A. Yes, sir.

Q. Have you produced here all of the correspondence with oil companies with respect to contracts in the years covered by Mr. Chambers' subpoena?

A. All that I could locate.

Q. Are you able to state the quantity of gas oil which your company has used in the different years covered by the scope of the examination this morning? That is, let us say, for 1907 down to the end of 1919?

A. I could not say how much in quantity we have taken altogether.

Q. Yes.

A. I could not tell you that offhand.

Q. You have reported that correctly to the Public Service Commission?

A. Yes, sir.

Q. And also the amounts paid?

A. Yes, sir.

Q. By the company for gas oil in each year?

A. Yes, sir.

30071 Q. And the amounts which you have so reported have been correctly shown in the annual reports to the Commission?

A. They have.

Q. And if it was desired at some future time, you could give us that data?

A. Yes, sir, I could give you that data, yes.

RE-DIRECT EXAMINATION BY MR. CHAMBERS:

Mr. Chambers: Now, have you given me back all of the papers that the Court directed me to hand you or not?

Mr. Ransom: I think so.

Q. Mr. Rosenquest, these quantities of oil which 30072 you purchased from time to time, 2,000,000 gallons usually, and sometimes with an option of 3,000,000 gallons and sometimes in less quantities, do you believe that if you were purchasing larger quantities of oil, say many more millions, do you believe that you could have obtained a price still more advantageous to your company?

A. I do not know, as I have not thought of that at all, Mr. Chambers. It depends entirely upon the available supply, I suppose.

Q. Supposing you were buying in quantities as high as a couple of hundred millions, have you any

thought as to whether you could obtain a less price or not, one way or another?

A. I can't suppose so high. I do not know. I have not tried to buy oil in quantities of that size. I do not know.

Q. You don't know whether buying in large quantities would put you in a position of obtaining a less price, or whether you would have to pay more?

A. I really could not tell you.

Q. Now, you take the situation in 1914, did you try to obtain a five-year contract at that time?

A. Mr. Chambers, I have always tried to buy as 30074
much oil as I thought the price was a favorable price. If I went to the oil company and I asked them their price of oil, and they stated a price and I thought it was an advantageous thing to buy all the oil I could at that price, I would take as many months' supply as they would give me, taking the gambling chance that that price was going up later on. Sometimes I have been left and sometimes I have won out, but I have always taken the gambling chance to buy all the oil I could at the price quoted at the time. If I felt that the price quoted at the time was a very high price, I bought as little as I could, six months' supply. If
I thought that the oil was at a favorable price and 30075
I had the inclination to believe that the price would be higher, maybe six months hence, I begged for a longer supply, then the oil company would screw me down, or at least keep me down to as few months' supply as possible.

Q. At the present time you are buying for short periods.

A. This last December they quoted the price of oil and I got quotations from other companies, and I finally went to the company that quoted the lowest price.

Q. That you have given?

A. Yes, sir, and I asked them for how long a supply they would give me, and they said six months, and I said we will take a year at that price, and they said, "We won't give it to you, that is the best we can do, things are too uncertain, the oil market is too uncertain, and we don't know where we are at." That is about the way they put it to me, the price of oil is fluctuating so every day, so I took what I could get, a six months' supply.

Q. In 1919 I see that there is quite a drop in the
30077 price to five and three-quarters cents. Did you try to get a long contract then?

A. I did, and they would not give it to me.

Q. There was quite a drop between 1918 and 1919?

A. There was a drop one period there. There was a drop in the spring of 1919, and I signed up for six months and I would have gladly signed up for a year, but I could not.

Q. Did you try all the companies then?

A. I tried all the companies, and that was the lowest price quoted me at that time, yes.

Q. Take in 1914, there wasn't any trouble getting a five-year contract if you had wanted it at that time
30078 that you know of?

A. I never tried to get a five-year contract. I buy a quantity contract, which sometimes carries us over two years, sometimes longer than two years.

Q. You would not want a five-year contract now, would you, in the light of—

A. Present prices. In the light of what I know today, no, I would not.

Q. That is, you say the oil market is very uncertain?

A. Yes.

Q. It would be unwise, wouldn't it, to take a long term contract just now?

A. I would consider it so. If I could get a price such as I had in 1919, I would take a five-year contract.

Q. Well, you do not anticipate that you may not have that opportunity, do you? You may have that opportunity, and you may not?

A. I hope to have the opportunity.

Q. How strong do you feel about having that opportunity? Do you think it will be offered to you?

A. No, I am rather pessimistic. 30080

Q. Mr. Rosenquest, your company, the Bronx Gas & Electric Company, are suing to have declared void the statute fixing the price of gas in the City of New York—you have begun suit?

A. Yes, sir.

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Ransom: It is quite immaterial. They cannot cross-examine their own witness on that.

Mr. Chambers: I am not cross-examining him, I am asking him.

The Master: The fact is immaterial. Objection sustained. 30081

Mr. Chambers: Exception.

Mr. Ransom: I move to strike out the answer if it is noted.

The Master: Yes. You have called the witness and have vouched for him.

Mr. Chambers: Yes.

The Master: Next question.

Q. I ask you this, Mr. Rosenquest: Did you try to buy gas oil during these periods that you have testified about, in larger quantities than the quantities that you have mentioned?

A. I have, yes, sir.

Q. Tried to buy in larger quantities?

A. I have tried to buy in larger quantities when I thought the price was a favorable price at which to buy it.

Q. And by buying in larger quantities—oh, you were unable to buy in larger quantities?

A. I bought in as large quantities as I could.

By the Master:

Q. When the price was favorable?

A. When the price was favorable.

Q. In other words, the attitude of the oil com-
30083 pany was that at the price they were quoting you they would only go a certain limit in quantity, at that price?

A. That is it.

By Mr. Chambers:

Q. Did they make any concession on the price because you bought in larger quantities?

A. No.

By the Master:

Q. I get the impression that they limited you in quantity because of the price?

A. They limited me in quantity nearly every time.

Q. From which I draw the inference that if you
30084 wanted a larger quantity you could not have gotten it at that price, at that fixed price?

A. Well, I really could not tell you. I bought as much oil as I could at the price quoted at the time.

Q. All you know about it is that they limited the amount they would give you at that figure?

A. Every time they limited me in the amount at the figure quoted.

By Mr. Chambers:

Q. Possibly if you tried to buy 100,000,000 you would not be able to buy it?

A. That I do not know. I never tried to buy so much oil at one time.

Mr. Chambers: That is all.

RE-CROSS EXAMINATION BY MR. RANSOM:

Q. What storage facilities have you for gas at your plant?

A. About 160,000 gallons.

Mr. Chambers: I object to that as not proper cross.

The Master: Objection sustained.

Q. How many months' supply of gas oil can you store at your plant?

Mr. Chambers: Same objection.

The Master: Same ruling.

Mr. Ransom: Exception. That is all. 30086

Mr. Chambers: That is all, Mr. Rosenquest.

The Master: I have just one question to get the record clear.

By the Master:

Q. When you say that you bought as much as you could, it meant that the time during which the contract was to be performed would be extended, in other words, you could not use more than the quantities that you needed monthly?

A. No.

Q. And, if, for instance, you got a million gallons, that would spread over a certain number of months?

A. A certain number of months, yes. 30087

Q. And if you got two million gallons it would spread over just twice the number of months.

A. Yes, sir.

Q. So when you talk of getting oil in larger quantities it meant for a longer period?

A. Yes, sir, for a long period of time.

Mr. Chambers: I have not any objection to Mr. Parkhurst going over until two if the other side will not take advantage of the fact of my shortage of witnesses, if there is any.

The Master: How many have you got?

30088 Edward A. Lyon, Direct.

Mr. O'Brien: We have two, who will fill out the time, your Honor.

The Master: On Mr. O'Brien's statement that you have enough witnesses to keep us until one, you may go until 2:15.

EDWARD A. LYON, recalled by the defendants, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

30089 Q. Mr. Lyon, you were here the other day on the witness stand and testified?

The Master: Yes, sir, the witness admits that.

A. Yes.

Q. You were served with a subpoena again to produce certain contracts?

A. Yes, sir.

Q. In addition to the contracts you produced the other day, have you two additional ones?

A. Yes.

Q. Will you produce them?

(Witness hands counsel papers.)

30090 Q. You now produce contract dated January 9, 1914, between your company and the New York & Richmond Company?

A. Yes.

Q. Whose signatures are at the bottom of that paper?

Mr. Ransom: If he knows.

A. J. W. Williams and William Welsh.

Q. Who are they?

A. Mr. Williams at that time was assistant general manager.

Q. Is that his signature?

A. Yes, that is his signature.

Q. Assistant general manager of the Gulf Refining Company?

A. Of the Gulf Refining Company.

Q. And who is Mr. Welsh?

A. Mr. Welsh was president of the New York & Richmond Gas Company.

Q. Is that his signature?

A. Yes, sir.

Q. That is a duplicate original contract?

A. That is a duplicate original contract.

Q. One copy was delivered to the Gas Company, I assume? 30092

A. Yes.

Q. And this one was retained by your company?

A. That is right.

Q. The other contract which you have given me is dated the 1st day of July, 1914, between the oil company and whom?

A. And the New York & Richmond Gas Company.

Q. Is that a duplicate original contract?

A. It is.

Q. Whose signatures are at the bottom?

A. Mr. Williams' and Mr. Welsh's, the same as on the other one.

Q. And a copy of that contract was delivered to the Gas Company? 30093

A. Yes, sir.

Mr. Chambers: I offer in evidence the first paper mentioned, the contract dated January 9, 1914, between the New York & Richmond Gas Company of Stapleton and the Gulf Refining Company.

The Master: What year is that?

Mr. Chambers: 1914.

Mr. Ransom: Objected to on the grounds previously stated.

30094

The Master: There is in evidence now, Judge Ransom, proof that in these years there was no market price, and it is the only way I can get at what oil was bought for—that is the price that was paid by the various companies. In the light of that testimony that there is not any market, any regular market, that each concern gets the best price that it can for the oil that it gets, do I not have to take all the evidence I can get on the subject?

Mr. Ransom: If that is true, it seems to me it only accentuates the position of the complain-

30095 ant.

The Master: That may be.

Mr. Ransom: It is no proof even under that theory of the case, which has been brought out by the witnesses produced by the defendants—that is no proof of the fact, for example, that if a Staten Island company in 1914, on a certain date in January, was able to or did make a contract for a certain price, that the Consolidated could have made a contract at the time it had to make a contract—

The Master: Isn't that something to bring out on cross-examination of this witness?

30096 Mr. Ransom (continuing): For the same price, quantity or quality.

The Master: Isn't that something to be brought out on cross-examination of this witness?

Mr. Ransom: If there is no market, then the question is as your Honor has indicated the fact is to this Gulf Refining Company, as to whether there were other oil companies in position to make a contract, did they desire to make a contract and were they willing to make a contract for the supply of gas oil to the Consolidated

30097

Gas Company, to fill all or a substantial part of the Consolidated's requirements, at a price better than that the Consolidated got at that time?

The Master: Yes, but I am inclined to think in the light of Mr. Rosenquest's testimony that where there is no market I would probably have to take what was done. Mr. Chambers will offer in evidence undoubtedly the lowest prices he can find.

Mr. Chambers: I am going to offer them all covering a period.

The Master: Mr. Lyon is on the stand. He is the resident sales agent of this company and he knows conditions. If you are correct in your statement he undoubtedly will bear it out that that is the fact. 30098

Mr. Ransom: Take the situation presented by Mr Rosenquest. Suppose Mr. Rosenquest made a contract for 3 1/2 cents in 1914; is that proof that the Consolidated got a contract for that?

The Master: No.

Mr. Ransom: As a matter of fact the Consolidated was getting oil at 2 1/2 cents at that time.

The Master: No. But it shows that for the quantity that Mr. Rosenquest got, covering the period that he would use it, he could get it at a certain price. 30099

Mr. Ransom: Higher than the Consolidated's price.

The Master: It may be that when this evidence is all in, instead of bearing out the defendant's contentions, it may all help you; but that is not the point I have got to pass upon. The point I have got to pass upon is whether it is proof that I should take. I am inclined to receive it.

30100

Mr. Ransom: But you see, for example, the Consolidated makes a contract, let us say, in July or in May.

The Master: Yes.

Mr. Ransom: They offer proof that in January or in October this company, the Gulf Refining Company, or some other company, made a contract with some other company in Newark or in Philadelphia or in Boston for a different quantity, a lower quality, a different price. That is not true that the Consolidated paid an unusual price.

30101

The Master: The more you talk about it, Judge Ransom, the more I am convinced that under the circumstances as now disclosed in the record I am going to take the contracts actually made by these gas companies as produced, so long as the witness who produces them is in a position to be cross-examined with reference to the situation. Mr. Lyon is in an ideal situation to be subjected to cross-examination the minute they offer these contracts in evidence, along the lines you have indicated.

Mr. Ransom: Another fact is, of course, that as the testimony now stands in the record the price of gas oil is a very fluctuating thing.

30102

The Master: I understand it.

Mr. Ransom: Because of different conditions which have been referred to.

The Master: I understand it.

Mr. Ransom: So that proof of a given contract made in December is no proof that in the preceding July or the following May a better price will be available.

The Master: I have sustained your contentions up to today, because there was no proof in the record that there was or was not a market.

30103

I had assumed there was some quoted price for gas oil running over periods. In the light of Mr. Rosenquest's testimony, that that is not the condition so far as gas oil is concerned, I am going to take this evidence for what it may be worth. It is perfectly easy for you as counsel for the complainant to bring out from this witness, if that be the fact, that it does fluctuate very rapidly, that prices quoted in January do not indicate the prices quoted in July; that prices in July do not indicate at all what you can buy it for in December, that the prices to a company requiring many millions do not indicate what you 30104
can get a few millions for, and so forth. I am going to take this offer.

Mr. Ransom: You see what that puts us under the necessity of doing—that is, of developing with respect to contracts made at or about the time our contracts were made, and where they do not offer such contracts—

The Master: Yes, you can bring them in. I will take it.

Mr. Ransom: These gas oil contracts all over the country?

The Master: I am going to take it.

Mr. Ransom: Exception.

30105

The Master: What are you offering first—what contract?

Mr. Chambers: The one dated January 9, 1914.

Marked Defendants' Exhibit AA53 of this date.

The Master: What is the other one?

Mr. Chambers: I offer in evidence contract dated July 1, 1914, between the Gulf Refining Company and the New York & Richmond Gas Company, which the witness has identified.

The Master: It will be received over the same objection.

Mr. Ransom: Objected to on the same grounds.

Marked Defendants' Exhibit AA54 of this date.

Q. Mr. Lyon, can you explain why the two contracts were made in the same year?

A. Yes.

Q. At different prices?

A. Where is the first one?

30107 Q. The first one is for 2,000,000 gallons at 4.375 or 4.25 for 30 gravity.

A. If you notice this ran originally—

Q. Speaking of Exhibit AA54?

A. No, this one (indicating).

Q. Speaking of Exhibit AA53.

A. That was taken originally for a period—this first one was to run originally for a year. This contract was later cancelled in July and a new one made to run for a period of three years.

Q. Which is Exhibit AA54?

A. Exhibit AA54. That explains why two contracts were made in that one year.

30108 Q. And the supply here was how many gallons a year?

A. That is estimated at 200,000 gallons per month over each 12 months' period.

Q. And for a period starting with July 1, 1914, it ran for three years?

A. Yes, sir.

Q. At 3.325 cents per gallon?

A. Yes, sir; right.

Q. That expired then on July 1, 1917?

A. Yes.

Q. And the other was cancelled, as you say.

A. That is right. You see, we took the longer term contract.

Q. Were the deliveries made under this contract Exhibit AA54?

A. Oh, yes.

Q. And it was executed?

A. It was executed completely.

By the Master:

Q. Do you bear out what Mr. Rosenquest said, Mr. Lyon, that there is not any standard quotation for oil?

A. There is not any; each is a separate contract.

Q. What is that?

A. Each is a separate contract. 30110

Q. And each trade stands on its own basis?

A. Exactly, and on varying conditions.

Q. So that what one man can get another man cannot get?

A. Yes, sir.

Q. Why is that? Can you tell me why there isn't a regular quotation for gas oil? Why is that so different from practically every other commodity?

A. Well, it is a condition of the individual company. There are times when a gas oil contract would be attractive, and at other times it would not be attractive. Therefore, no bid would be made at all, or possibly it would be a higher bid than the expectation. 30111

Q. Well, gas oil comes from the crude product, doesn't it?

A. Yes, from various parts of the country.

Q. It is the result of a refining process it goes through?

A. It is either the result of the refining process, or else it is a residual.

Q. Isn't there a fairly definite market over a period from time to time on crude oil?

A. Well, that is a very variable quantity in itself.

Q. But there are quotations on that?

A. Oh, yes, on crude of various kinds.

Q. Yes, crude of various kinds?

A. The quality differs.

Q. Yes, surely, but as to the various kinds you can always find a quoted price?

A. Yes.

Q. Why isn't that so of gas oil?

A. Well, take our case, for instance, we draw our oil from the Texas, Louisiana, Oklahoma and Mexican fields. We may have flush products at one
30113 time, that is, plenty of the crude. That is a situation that can change in thirty days. It can fall off. Before we can market it we must bring it up here in ships. We make contracts all over the country. These ships go to different ports. While we are making contracts here we are making them at other points. There may be times when having assumed obligations for other points, we would not care to make obligations here, or if we did so we would probably, owing to the scarcity of tonnage, of ships, ask a higher price for it here.

Q. In other words, it depends on the peculiar condition of your particular concern as to the price you
30114 are willing to sell oil for?

A. Precisely.

Q. Some other concern may be in an entirely different situation at that particular time?

A. Precisely.

By Mr. O'Brien:

Q. Do you pipe any oil here?

A. No, we don't pipe any oil here.

Q. You don't control any pipe lines?

A. No, we have no interest in any pipe lines in the north.

Q. The Standard Oil Company has, they pipe their oil in?

A. Yes, sir.

By Mr. Chambers:

Q. Mr. Lyon, did you produce or did you find in your records the contract between your company and the New York & Richmond Gas Company of May 24, 1907?

A. No, I couldn't find it.

Q. And March 16, 1908?

A. No, I couldn't find it.

Q. I show you a paper dated May 24, 1907. That 30116
is a copy of a contract, isn't it, between your company and the New York & Richmond Gas Company?

Mr. Ransom: I object to the statement of counsel. Mr. Lyon has not shown that he knows anything about it, it does not appear that he was connected with the company at that time. How can he take something that has been copied by someone—

The Master: I don't know. Mr. Lyon may have been connected with the company for all I know. Can you say this is a copy of that contract, Mr. Lyon?

The Witness: Yes.

Q. You haven't the original, so as to produce it? 30117

A. No.

Q. Look at this paper dated March 16, 1908, is that a copy of a contract that was made between your company and the New York & Richmond Gas Company?

A. Yes, sir.

Q. Where are the originals of those?

A. Why, the gas company should have one copy and no doubt one of the originals is on file in our Pittsburg office, and possibly another in our Phila-

delphia office. This seems to have been executed at Philadelphia

Mr. Chambers: Is the New York & Brooklyn Gas Company here?

The Witness: No, Mr. Welsh telephoned me Saturday that he had been called for for tomorrow.

Q. You say these are copies?

A. Yes, those are copies.

Q. Is there any way that you can get the originals of these sent from the Pittsburg office here?

30119 A. Yes.

Q. You can do that?

A. I can have them produced, if it is necessary. Mr. Welsh should be able to produce his, however, which would answer the purpose.

Q. If he produces his it will be all right. He has copies?

A. Yes. If he can't produce them I will get them for you.

Mr. Chambers: Then we will just wait. In the meantime I ask that these copies be marked for identification. They were filed with the Public Service Commission as copies.

30120 Mr. Ransom: I object to that. There is no evidence that they were filed with the Public Service Commission.

The Master: The statement that they were filed with the Public Service Commission is stricken out. The witness has identified them as copies.

Papers marked Defendants' Exhibit AA55 for identification and AA56 for identification.

Q. Have you produced contracts between your company and the Kings County Lighting Company of July 7, 1905?

A. No, I couldn't find that.

Q. And October 5, 1906?

A. No.

Q. I show you contract dated July 7, 1905. What is that, Edward A. Lyon?

A. Yes, sir.

Q. Do you remember that?

A. Yes, sir.

Q. You executed that on behalf of the company?

Mr. Ransom: I object to that. This is another one of these copies. Mr. Chambers does not mean to state that that is a contract.

Q. Is that a copy of the original contract? 30122

Mr. Ransom: I object to that.

A. My recollection is it is.

Q. And the Kings County Lighting Company has one copy and the Gulf Refining Company another?

A. Yes, sir.

Q. You executed that on behalf of the Gulf Refining Company?

A. Yes, sir.

The Master: You executed the original?

The Witness: Yes, sir.

Mr. Chambers: Mr. Elsman, have you the contracts dated October 5, 1906, and July 7, 1905, the originals?

30123

Mr. Elsman: Yes, I have one here dated July 7, 1905.

Mr. Chambers: The other one is October 5, 1906.

Q. Mr. Lyon, is that your signature to that contract (showing paper)?

A. Yes, sir.

Q. Whose signature is the other there?

A. W. G. Phillips.

Q. Who was he?

A. Vice president.

30124 Edward A. Lyon, Direct.

Q. Of the Kings County Lighting Company?

A. Yes, sir.

Q. Did you execute that at the same time, you and he?

A. Yes, sir.

Q. That is his signature?

A. Yes, sir.

Q. And you knew who he was, and that is his original signature?

A. Yes, sir.

Mr. Chambers: I offer in evidence contract
30125 dated July 7, 1905, between the Gulf Refining Company and the Kings County Lighting Company.

The Master: That is received over the same objection and exception.

Paper received in evidence and marked Defendants' Exhibit AA57.

Mr. Ransom: I take it that the defendants will supply complainant with copies of these contracts?

The Master: Yes, they ought to.

Q. This contract dated October 5, 1906, that is a copy of the original, is it?

Mr. Ransom: I object to the statement that
30126 it is a contract, it is nothing but somebody's copy.

The Master: Objection overruled.

Q. Where is the original, Mr. Lyon?

A. There is an original in Pittsburg if it can be produced. I don't know whether they can dig up their records as far back or not. It is possible, and very probable.

Q. That it is in existence and in Pittsburg?

A. Yes, sir.

Q. Is this a copy?

A. Yes.

Q. Do you think that you can produce that original for us?

A. Yes.

Q. The Kings County Company does not seem to be able to find their copy.

A. I rather think it can be dug up in Pittsburg.

Q. Will you write them and see?

A. Let me have a memorandum of that date.

Mr. Chambers: Is the Queens County Gas & Electric Company here, a representative?

(No response.)

Q. Did you produce a contract between your company and the Queens Borough Gas & Electric Company bearing date December 5, 1904? 30128

A. Yes, sir.

The Master: That seems to be a copy.

Q. You didn't get the original of that?

A. No.

Q. Is this a copy, Mr. Lyon?

A. It seems to be a copy, yes.

Q. That was signed by you?

A. Yes.

The Master: Did you produce that copy, Mr. Lyon?

The Witness: No, I did not.

Mr. Chambers: It came from the Public Service Commission files. 30129

Q. The other contract, March 30, 1908, is that a copy of the contract between your company and the Queens Borough Gas & Electric Company?

A. Yes.

Q. You did not produce the original here today?

A. No.

Q. There is a letter—you would not know anything about that?

A. No, I don't know anything about that.

30130 Edward A. Lyon, Direct.

Q. Do you think the original of these two contracts are in the files of the Gulf Refining Company at Pittsburg?

A. Very likely.

Q. And you will produce them if you can find them?

A. Yes, sir.

Q. Did you furnish gas oil to the Brooklyn Borough Gas Company without a contract?

A. Brooklyn Borough, Coney Island?

Q. Yes.

30131 A. No.

Q. Not that you recall?

A. No

Q. Did you furnish the Queens Borough Company, the Queens Borough Gas & Electric Company, with gas oil for a number of years without a contract?

A. No.

Q. You don't recall that?

A. No.

Q. Mr. Lyon, I show you a paper bearing date June 30, 1910, written by Mr. Pearson of your company. Do you know Mr. C. R. Nutty's signature?

A. Yes, sir.

30132 Q. Is that his signature?

A. Yes, sir.

Q. He is general sales manager of your company?

A. At that time; he is now vice president.

Q. Who was Mr. Pearson?

A. Mr. Pearson is the purchasing agent.

Q. Of the Public Service Gas Company of New Jersey?

A. Yes, sir.

Q. Is that his signature?

A. Yes.

Mr. Chambers: I offer in evidence this letter of contract dated June 3, 1910, between the

Gulf Refining Company and the Public Service Gas Company of New Jersey.

Mr. Ransom: I object to that as wholly incompetent, having no bearing on any issue in this case. There is no similarity of market conditions, no similarity of delivery conditions, not the same market.

The Master: I will take it.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit AA 58.

Q. I show you another paper and ask you if you 30134
know whose signatures are at the bottom?

A. G. R. Nutty's and J. A. Pearson's.

Q. Mr. Nutty, general sales manager of the Gulf Refining Company?

A. Yes, sir, and Mr. J. A. Pearson, the purchasing agent.

Q. This paper is a contract between the Gulf Refining Company and the Public Service Gas Company?

A. Yes.

Q. Was it executed?

A. Yes.

Q. Was the oil delivered? 30135

A. Oh, yes, the contract was carried out.

Q. And the oil mentioned in the last exhibit, that letter, was that agreement carried out and the oil delivered?

A. I didn't read the letter.

Q. Look at it.

A. Yes, sir, all contracts we have ever made with them have been carried out.

Mr. Chambers: I now offer in evidence this paper being an agreement between the Gulf Refining Company and the Public Service Gas Com-

pany of New Jersey, bearing date June 1, 1910, which has just been identified by the witness, having been executed by G. R. Nutty, general sales manager of the Gulf Refining Company, and J. A. Pearson, purchasing agent of the Public Service Gas Company of New Jersey.

Mr. Ransom: I object to that as of no probative force, and not competent on any issue in this case, no similarity of conditions or similarity as to time of making, quality of oil, and no aid upon the present question.

30137 The Master: Objection overruled.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit AA59.

Q. I show you another paper bearing date May 25, 1913. Do you recognize the signature at the bottom of the papers?

A. I do.

Q. Whose signature do you recognize?

A. G. R. Nutty, general sales manager of the Gulf Refining Company, and J. A. Pearson.

Q. He is the purchasing agent of the Public Service Gas Company of New Jersey?

30138 A. Yes, sir.

Q. Their signatures are on twice there, I see?

A. Yes.

Q. These are the original signatures?

A. Yes.

Q. This was a contract between the Gulf Refining Company and the Public Service Gas Company of New Jersey?

A. Yes.

Q. For 27,000,000 gallons of gas oil and not more than 33,000,000 gallons?

A. Yes.

Q. And was that contract carried out and executed?

A. Yes, all of our contracts were.

Q. And the oil was delivered in accordance therewith?

A. Yes.

Q. And paid for?

A. Yes, all of our contracts with the Public Service Gas Company have been carried out.

Mr. Chambers: I offer that contract in evidence, being a contract dated May 25, 1913.

The Master: Received over the same objection and exception. 30140

Marked Defendants' Exhibit AA60.

Q. I now show you another paper bearing date August 3, 1914. Do you recognize the signature on the bottom?

A. I do.

Q. That is G. R. Nutty's signature?

A. Yes, sir.

Q. General sales manager of the Gulf Refining Company?

A. Yes, sir.

Q. And Mr. Pearson's signature?

A. Yes, sir. 30141

Q. He is the purchasing agent of the Public Service Gas Company?

A. Yes, sir.

Mr. Chambers: I offer that paper in evidence being a contract dated August 3, 1914, between the Gulf Refining Company and the Public Service Gas Company of New Jersey, accepted August 3, 1914, for 252,000,000 gallons of gas oil at 3.05 cents per gallon.

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. Ransom: And I want to add to my previous grounds of objection with respect to these contracts with the Public Service Gas Corporation, that they do not come within your Honor's previous rule, because it appears from Mr. Lyon's testimony when he was here before as a witness for the defendants, that he did not negotiate or execute these contracts, that they were handled by Mr. Nutty. The question of what was done as to their negotiation and as to their performance is not within the matters
30143 as to which he is familiar, so that the receipt of them under these circumstances deprives us of the opportunity which you said that we should have when you indicated that you would receive these documents, namely, an opportunity to cross-examine.

The Master: You may cross-examine him.

Mr. Ransom: He does not know about these.

The Master: He knows enough about them to know that there were some special circumstances that he is not familiar with that must have entered into the contracts that might not apply to some other contracts.

30144 Mr. Ransom: And as to the carrying out of them?

The Witness: They were carried out under my supervision.

Q. They were carried out under your supervision?

A. Yes.

Q. You know about them as much perhaps as Mr. Nutty knows about them, don't you?

A. Yes.

Q. Now I show you—

Mr. Ransom: I except to your Honor's ruling.

Marked Defendants' Exhibit AA61.

Q. I now show you another paper and ask you if you identify the signatures at the bottom of the paper?

A. I do.

Q. Whose signatures do you find there?

A. G. R. Nutty, general sales manager of the Gulf Refining Company.

Q. The same parties you heretofore described?

A. Yes, and J. A. Pearson.

Q. And these are their original signatures?

The Master: You need not repeat all of the questions. 30146

Mr. Chambers: I offer this contract.

The Master: Received over the same objection.

Mr. Ransom: Exception.

Mr. Chambers: Being contract dated August 1st, 1914, between the same parties for 252,000,000 gallons of gas oil.

Marked Defendants' Exhibit AA62.

Q. Deliveries were made under that contract, and it was carried out under your supervision?

A. Yes.

Q. Now, I show you another paper bearing date June 21, 1919, between the Gulf—purporting to be between the Gulf Refining Company and the Public Service Gas Company. Do you recognize the signatures at the bottom of the paper? 30147

A. Yes.

Q. Whose signature?

A. G. R. Nutty, vice president and J. A. Pearson, purchasing agent.

Q. Those are their original signatures?

A. Yes.

Q. And those are the same men you have heretofore described?

A. Yes, sir.

Mr. Chambers: I offer this paper in evidence, being contract dated June 21, 1919.

The Witness: I had nothing to do with this, this is general (indicating), part of it I did.

Q. Well, was it executed?

A. Yes the contract was carried out.

The Master: I will receive it over the same objection.

30149 Mr. Ransom: Exception.

Marked Defendants' Exhibit AA63.

Q. What are these pencil marks on it, Mr. Lyon? Those do not have anything to do with the contract itself, do they?

A. I would not think so.

Mr. Chambers: I ask that the pencil marks be excluded. We do not know what they are for.

Q. Do you know who made them?

A. No, I know nothing about those.

Mr. Ransom: Is this the copy produced from your office?

The Witness: I do not recall. I did not keep this.

30150

Mr. Chambers: That was produced by the Public Service Commission. Now, that came from your office.

The Witness: Yes, that is one of those that I produced. I left them with you.

Q. I show you another paper, bearing date September 30, 1912. Do you recognize the signatures at the bottom?

A. Yes, G. R. Nutty and J. A. Pearson.

Q. And Pearson is there as signing for that company?

A. For the Equitable Illuminating Gas Light Company of Philadelphia.

Q. And those are their original signatures?

A. Yes.

Q. I show you another paper dated September 30, 1912, and ask you whose signatures you find there?

A. The same as before.

Q. They are the original signatures of Mr. Nutty and Mr. Pearson?

A. Yes.

Mr. Chambers: I offer in evidence the first of the papers just identified, being dated September 30, 1912, for 20,000,000 gallons of gas oil at 3.95 a gallon, between the Gulf Refining Company and the Equitable Illuminating Gas Light Company of Philadelphia, and I likewise offer in evidence the second paper bearing date September 30, 1912, between the Gulf Refining Company and the Equitable Illuminating Gas Light Company of Philadelphia for 20,500,000 gallons of gas oil at 3.95 and 3.90 cents a gallon, *et seq.* 30152

The Master: Received over the same objection.

Mr. Ransom: I will also add the objection, which I think is decidedly well founded, that this contract or these contracts now offered do not relate to any oil deliveries in or about New York Harbor or New York City or the Metropolitan District. 30153

The Master: I will take it.

Mr. Ransom: And they are a remote condition, there is no similarity of condition or anything else shown.

The Master: I will take them.

Mr. Ransom: Exception.

Marked Defendants' Exhibits AA64 and AA65.

Q. Were those contracts carried out, Mr. Lyon?

Mr. Ransom: I object to it, it does not appear that he knows anything about them.

The Witness: I do not know anything about those contracts. I am sure that all of our contracts with the Public Service Company were carried out.

Q. Or with the Equitable?

A. Or with the Equitable Illuminating Gas Light Company.

Q. I show you another paper bearing date Sep-
30155 tember 23, 1919. Whose signatures do you find at the bottom?

A. N. W. Williams, general manager of the Gulf and J. A. Pearson, purchasing agent of the Equitable Illuminating Gas Light Company.

Q. They are original signatures?

A. Yes.

Mr. Chambers: I offer that contract in evidence, being contract dated September 23, 1919, between the Gulf Refining Company and the Equitable Illuminating Gas Light Company of Philadelphia.

Mr. Ransom: Objected to on the grounds pre-
30156 viously stated.

The Master: I will receive it over the objection.

Mr. Ransom: Exception.

Marked Defendants' Exhibit AA66.

Q. I show you another paper bearing date October 21, 1913. Whose signature do you find at the bottom of that?

A. G. R. Nutty and J. A. Pearson.

Q. And those are their original signatures?

A. Yes.

Mr. Chambers: I offer this agreement in evidence, being agreement dated October 21, 1913, between the Gulf Refining Company and the Equitable Illuminating Gas Light Company of Philadelphia,

Mr Ransom: Same objection.

The Master: Same ruling.

Mr. Ransom: Exception.

Marked Defendants' Exhibit AA67.

Q. I show you another paper bearing date September 24, 1914. Whose signatures do you find at the end of that? 30158

A. G. R. Nutty and J. A. Pearson.

Q. And those are their original signatures?

A. They are.

Mr. Chambers: I show you another paper bearing date August 5, 1914. That is the original signature of Mr. Nutty and Mr. Pearson?

A Yes, sir.

Q. And that paper was apparently cancelled, was it?

A. Yes, sir. I know nothing of it beyond I happened to see it.

Mr. Chambers: I offer both papers which are identified by the witness. 30159

Mr. Ransom: I object to it on the ground the witness knows nothing about it, he said he merely saw it. How can that be a foundation?

Mr. Chambers: Being an agreement dated September 24, 1914, between the Gulf Refining Company and the Equitable Illuminating Gas Light Company, and another agreement dated August 5, 1914, between the same parties.

The Master: Received.

30160 Edward A. Lyon, Direct.

Marked Defendants' Exhibits AA68 and AA69.

Mr. Ransom: I specifically object to the receipt and move to strike out the paper last offered on the ground the witness simply stated he knows nothing about it.

The Master: Objection overruled.

Mr. Ransom: Exception.

Q. You mean you know nothing about the cancelled part of it?

A. That is all I mean. The signatures I recognize.

30161 Q. I now show you another paper bearing date October 29, 1919. Do you recognize the signatures at the bottom of that paper?

A. G. R. Nutty and J. A. Pearson.

Q. The same parties you have described?

A. The same parties.

Mr. Chambers: I offer this paper in evidence, being agreement dated October 29, 1919, between the Gulf Refining Company and the Equitable Illuminating Gas Light Company of Philadelphia.

Mr. Ransom: Objected to on the previous grounds.

30162 The Master: Objection overruled.

Mr. Ransom: Exception.

Marked Defendants' Exhibit AA70.

Q. I show you another paper bearing date September 29, 1916. Do you recognize the signatures?

A. G. R. Nutty. I cannot say as to Richards.

Q. That is Mr. Nutty's original signature?

A. Yes, sir.

Q. And did you know anything about this contract?

A. I know that there was such a contract in existence, that is all.

Q. And one copy was delivered to the Boston Consolidated?

A. Yes, sir.

Q. And one copy kept by the Gulf Refining Company?

A. Yes, sir.

Q. This is a copy produced from the files of your company?

A. I think that is on the list. I haven't the list in front of me. September 29th?

Q. Yes.

A. Yes, that is the one. 30164

Q. And that is the duplicate original then?

A. That is right.

Mr. Chambers: I offer that contract in evidence, bearing date September 29, 1916.

The Master: Do you object on the ground the Boston Consolidated's signature is not shown?

Mr. Ransom: I object on all grounds, on the ground that the competency of it is not proven, that a witness concerning whom we may cross-examine, a witness who knows something about it, is not produced; on the ground that it has no bearing upon any issue in this case; and I specifically object on the ground that no proper 30165 foundation has been laid.

Mr. Chambers: Perhaps he is right about it, if he takes advantage of the fact I have not proven the signature of J. R. Richards, President of the Boston Consolidated Gas Company.

Q. Who is Mr. A. S. Bull, do you know?

A. I don't know him.

Q. Or this other fellow up here?

A. He evidently witnessed Richard's signature. Guthrie is secretary of our company and witnessed Nutty's signature. They seem to be the respective seals of the company.

30166 Edward A. Lyon, Cross.

Mr. Chambers: Well, the only way I know of is that we can issue a commission up there to have Richards identify the paper. We cannot get him by subpoena, you know.

Mr. Ransom: It has no bearing on any issue of the case. I don't know why you say you cannot produce him here. You can get him by a qualified subpoena.

The Master: We will take recess until 2:15.

Recess.

30167

Afternoon session.

Q. I think you have identified all the contracts, excepting three that you are going to look up and see if you can find the originals of?

A. Yes.

Q. Then come at your convenience?

A. Yes.

Q. You will notify us if you find them?

A. Yes.

Mr. Chambers: I think that is all.

30168 CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Lyon, how long have you been connected with the Gulf Refining Company in New York territory?

A. Roughly about seventeen years.

Q. Is there any relation between the price of gas oil and the price of crude oil?

A. Is there any relation?

Q. Yes.

A. Yes, a general relation, naturally.

Q. In some of the contracts which you have produced here today the price is made readjustable

according to the variations in the price of Oklahoma crude?

A. No.

Q. Are you sure of that?

A. I think not. My recollection is all prices were fixed.

Q. I call your attention to paragraph 5th of Defendants' Exhibit AA60, the contract with the Public Service Gas Company in May, 1913. "It is understood and agreed between the parties hereto that the above prices are based on the present price of 88 cents per barrel for Oklahoma crude oil, and the above prices 30170
shall be increased or reduced at the rate of one-forty-second of a cent per gallon for every one cent increase or reduction in the price of Oklahoma crude oil during the period of this agreement."

A. That may have been true and that was probably an exception. I think if you look through all the other contracts that would be the one exception.

Q. What factors do you say fix the prices at which your company, for example, or other companies having gas oil, would be willing to sell gas oil?

A. It depends upon the price of crude, or the amount of crude at your own disposal.

Q. Gas oil is obtained by you how? 30171

A. Well, it is the crude oil, either refined or a residue of the refined product.

Q. It is one of the by-products or the residuals of the refining of crude?

A. Yes.

Q. Does your company sell kerosene?

A. Yes, sir.

Q. And gasoline?

A. Yes.

Q. And the price at which you are willing to dispose of gas oil at a given time depends in part on the

quantity of gas oil which you obtain from refining, and also upon the price which you are obtaining for gasoline and kerosene?

A. Not necessarily, gasoline and kerosene would not enter into—

Q. They would not enter into it at all?

A. I think not, no.

Q. But the price of crude would?

A. Yes.

By the Master:

Q. And the quantity at your disposal does?

30173 A. Yes, precisely. That determines it very largely.

Q. In other words if from fields that you draw your oil the quantities are not as liberal as at other times, your price may be higher?

A. Precisely. If it is scarce, yes. It is a case of supply and demand.

Q. You might have a better supply of crude at a particular time than some other company, and at some other time have a poorer supply; is that the idea?

A. That is very true.

By Mr. Ransom:

Q. And the prices which you quote from time to

30174 time are the prices which you seek to make in order to dispose of such gas oil as you have?

A. Precisely.

The Master: Do I understand from that, Mr. Lyon, that if you have an overabundance of crude oil your price is down?

The Witness: Yes.

Q. That is a very variable factor, is it not?

A. That is a very variable factor, yes.

Q. The conditions which affect the prices at which you are willing to sell gas oil change at various periods of time?

A. They are apt to, yes.

The Master: How quick?

The Witness: Well, sometimes they change overnight. For instance, we may make a large contract to-day which would take all our available supply.

Q. And then after that you may not be able to quote any price at all?

A. Precisely.

Q. And may not have any for delivery at all?

A. That is, it would not be attractive to us; yes.

Q. Another factor controlling your ability to offer gas oil at a competitive price would be the situation 30176
as to marine transportation?

A. Transportation, yes.

Q. All your oil has to come from the Oklahoma, Texas and Mexico fields?

A. Yes.

Q. You have no intermediate field from which you could draw all or part of your supply, as the Standard of New Jersey has?

A. No.

Q. And at times the difficulty as to marine transportation has been a very serious factor with you?

A. At times, yes.

Q. In November and December of 1919 did you 30177
have any substantial quantity of oil to offer?

A. No, I cannot say that we had.

Q. Have you any gas oil today, in any substantial quantity?

A. No, we are not offering gas oil in this market today.

Q. What was the last price you quoted in this New York territory, do you recall?

A. Yes, I think the last price I quoted was 7-3/4.

30178 Edward A. Lyon, Cross.

Q. In December of 1919 were you asked to bid by the New York Mutual Gas Light Company for 15,000,000 gallons of gas oil, 28 to 34 degrees gravity, for 1920 delivery?

A. I received an inquiry from one of the companies here in New York City. I do not recall the one.

Q. This is your letter in reply (handing witness)?

Mr. O'Brien: I am going to object, your Honor.

The Master: When?

Mr. O'Brien: Right now. It does not make
30179 much difference now whether I move to strike out the question and answer or catch him on the wing here, this baby, as he goes; but I am going to object that it is not proper cross-examination.

The Master: Objection overruled.

Mr. O'Brien: Your Honor has already ruled that what some company may have gotten the gas oil for would not be admissible here.

The Master: Yes, but I have admitted it today. When the proof came in that there was not any general market quotation I let you gentlemen for the defense put in these contracts, put in these prices at which the gas companies
30180 have been buying oil. Now, I am going to let Judge Ransom examine him, if he can, as bearing upon those prices.

A. That is mine.

Mr. O'Brien: I object. He has not produced the original of which that purports to be an answer now.

Mr. Ransom: We are just talking about the letter which he signed now.

The Witness: That is my reply.

Q. Is the statement which you made therein true, and was it true at the time?

30181

Mr. Chambers: I object to that.

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial; particularly on the ground that the letter of which this purports to be an answer has not been presented to the witness and is not in evidence.

The Master: Objection overruled.

Mr. O'Brien: It is incomplete without it, your Honor.

The Master: Objection overruled.

Mr. O'Brien: Exception.

30182

A. What is the question?

The Master: Is the statement you make in that letter correct?

The Witness: It is.

Mr. Ransom: I offer the letter in evidence.

Mr. Chambers: Let us see it (taking paper). I object on the ground—

Mr. O'Brien: Your Honor, I object to it on the ground first that it is incompetent, irrelevant and immaterial; particularly on the ground that the letter to which it is an answer has not been offered in evidence and is not in court.

30183

The Master: Have you got the letter to which this refers?

Mr. Ransom: I have a copy of it.

The Master: Will you show it to the witness? Do you recognize that as the letter referred to in this letter of yours (handing witness)?

The Witness: I do not recognize the letter, but it appears to be an answer to this particular one (indicating). I receive many inquiries of this nature, therefore I cannot identify it.

The Master: Let me say this: I do not think it is so important to have the letter in evidence.

By the Master:

Q. In this letter of November 6th to New York Mutual you say, "We regret to advise that owing to shortage in our marine transportation we are not in position to offer you the gas oil mentioned at this time."

A. Yes, sir.

Q. You would say that the gas oil mentioned at that time was 15,000,000 gallons, of 28 to 34, covering 1920?

A. Well, I can only say presumably so. I have no
30185 doubt that that is the—

Q. Would that have been true in December, 1919, of such an inquiry?

A. Yes, sir.

Mr. O'Brien: You are receiving that copy?

The Master: He is not pressing it.

By Mr. Ransom:

Q. Did you, in November, 1919, receive an inquiry from the Consolidated Gas Company with respect to the supply of all or part of its requirements?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial, and particularly upon the ground that they are attempting now through
30186 these questions to put in evidence occurrences that have taken place since the trial of this action was begun.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Q. Did you receive an inquiry from the Consolidated?

A. I received an inquiry from one of the companies of the Consolidated, and as I recall for 125,000,000 gallons of oil.

30187

Q. Is this letter dated November 28, 1919, on the stationery of the Gulf Refining Company, addressed to the Consolidated Gas Company of New York, attention of Mr. W. R. Addicks, vice-president, purporting to be signed by you, a reply which you made to such inquiry by the Consolidated Gas Company?

A. That is my own answer, yes.

The Master: Well, read it to us.

Q. And you stated in there, "Replying to yours of November 25th, regret to advise that we have no gas oil to offer at the present time."

30188

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial; on the further ground that this is something that took place since the witness Addicks was on the witness stand testifying to these matters—manifestly put in here to bolster up their case.

The Master: Objection overruled. Did you make that statement in that letter?

A. I did.

The Master: Was it true?

The Witness: It was true.

Mr. O'Brien: Note my exception.

30189

Q. And can you identify that as the letter to which you made that reply, or a copy of the letter to which you made that reply (handing witness)?

A. No, I cannot identify that copy. As I say, I get many inquiries and they are answered offhand, you know. Without the original I could not say that it was a reply to it.

Q. In 1917, did you receive an inquiry from the Consolidated Gas Company through Mr. W. R. Addicks, vice-president, with respect to your ability to supply all or some part of the Consolidated Company requirements, to which you made this reply, which I

show you for the purpose of refreshing your recollection (handing witness)?

Mr. O'Brien: That is in evidence, is it not? It is in evidence, your Honor.

The Master: All right, he may show it to the witness.

A. I do not recall the inquiry, but this is my reply here.

Q. And you stated in that in substance that you did not have any gas oil to offer?

Mr. O'Brien: Objected to. The letter would
30191 speak for itself if it were admissible.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Mr. Ransom: You did?

A. I did, sir.

Q. And that was true?

A. That was true.

The Master: Read just what he did say. You say he said that in substance; now read what he said.

Mr. O'Brien: It is almost as brief as the last one.

Mr. Ransom: "Regret to advise that we have
30192 no gas oil to offer at the present time."

Mr. O'Brien: It looks like a cablegram.

By the Master:

Q. Was that the fact, Mr. Lyon?

A. That was the fact.

Q. If you had any gas oil to offer in the quantities you thought would meet the requirements of the Consolidated, would you put in a bid and try to get the business?

A. It all depends on the quantity involved.

Q. I mean if you had the quantity involved?

A. Why, yes, if we had oil to sell we would as soon have sold it to the Consolidated as anybody else.

Q. You would have given them a price?

A. Yes, sir.

Q. On what you had?

A. Yes.

Q. But you had nothing?

A. No, sir.

Mr. O'Brien: On that day.

The Witness: On that day or about that time.

By Mr. Ransom:

Q. Do you remember in November of 1918 receiving an inquiry to which you made a reply which I now show you for the purpose of refreshing your 30194
recollection (handing witness)?

A. I do not recall the inquiry, but that is my reply.

Q. And you stated in this letter, which is Exhibit 311 in evidence: "We very much regret to advise we are not"—

Mr. O'Brien: I object to it. It is in evidence and I do not think he ought to read it.

Mr. Ransom: I want to get his statement of the truth of it.

Mr. O'Brien: You can get the simple statement. Let us cut this trial short.

The Master: Objection overruled.

Q. (Continued.) "We very much regret to advise 30195
that we are not in position to offer gas oil at the present time. At a later date, however, when some of our ships are returned by the Government, we will be glad to consider the matter further if you should still be in the market at such time." Was that a correct statement of the situation?

A. Precisely.

Q. Did you ever see this letter from Mr. Nutty (handing witness)?

A. No, I have not seen this letter. It seems to be addressed to Mr. Addicks. It is from W. L. Mellen.

30196 Edward A. Lyon, Cross.

Q. Who is he?

A. Mr. Mellen is Chairman of the Board of Directors, I believe.

Q. In this letter, which is Exhibit 310 in evidence, Mr. Mellen, Chairman of your Board of Directors, states that he wishes "to advise that we are always interested in an opportunity to supply gas oil. However, until our ships which are now in Government service are returned, we will not be able to make deliveries. In short I hardly believe we could deliver any substantial quantity during the first half of 1919."

30197 Was that an accurate statement, in your judgment, at that time, of the situation of the company?

A. That is Mr. Mellen's statement, but I think it was an accurate statement.

The Master: From your knowledge of the business of the company would you say it was an accurate statement?

The Witness: I would say so, yes.

Q. I notice that some of the contracts which have been put in evidence by the defendants in this case it is provided that the quantities of gas oil delivered shall be determined by the measurements made by Meyer & Company?

30198 Mr. O'Brien: Objected to on the ground that the contracts speak for themselves.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Q. Do you know who Meyer & Company are?

A. Yes.

Q. Are they a successor or predecessor firm of Martin & Company?

A. They are a predecessor; Martin & Company is the firm at the present time.

Q. They are gaugers or surveyors of the New York Produce Exchange?

A. Yes, sir.

Q. Have all of these contracts contained such provisions, and been billed on the basis of such certification?

Mr. O'Brien: I object to that as incompetent, immaterial and irrelevant, how they were billed.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. Yes, where it specifies.

The Master: Is that the usual method of selling gas oil?

The Witness: Well, generally speaking that is so, by barge delivery. 30200

The Master: Barge delivery, the certified reports of these Produce Exchange people?

The Witness: Yes, sir.

The Master: That is done to eliminate friction and argument, isn't it?

The Witness: That is right.

Q. Your company has no pipe line facilities into this northern or northeastern territory, has it?

A. No.

Q. It has to depend entirely upon boat delivery?

A. Tank vessels.

Q. Do you refine any crude oil in or in the vicinity of New York? 30201

A. No.

Q. Have you any storage tanks for oil in New York City or immediate vicinity?

A. Well, at Bayonne, New Jersey, across the river.

Q. None in New York City?

A. None in New York City.

The Master: What is the storage capacity that you have over in Bayonne?

The Witness: Oh, I can't say offhand, several hundred thousand barrels, roughly.

Q. Not more than that?

A. No, several hundred thousand barrels.

The Master: What do you figure to the oil barrel, about 50 gallons?

The Witness: 42 gallons, is the bulk barrel. We probably have half a million barrels storage capacity.

Q. What is the capacity of your tank steamers or barges for delivering gas oil?

A. Well, the tank steamers vary. The barges are the ones that deliver to the gas works. They run
30203 from 80,000 to 125,000 gallons capacity.

Q. What is the capacity of the steamers?

A. From 20,000 to 100,000 barrels.

Q. How many such steamers do you have in this service or available for this service?

A. Well, we operate our steamers as suits the conditions. We have a total of about 13 vessels of our own, and four chartered. We arrange the schedules to meet the conditions.

Q. Have you been short on lighterage capacity?

Mr. O'Brien: Objected to, as not being specific as to time.

Q. During the recent months and recent years?

30204 A. Not lighterage, no, we are not short on lighterage capacity.

Q. What difficulties have you?

A. You probably refer to steamer capacity.

Q. You have been short on steamer capacity?

Mr. O'Brien: Are you talking about the war time period? Why not be specific, it will have to be asked anyway.

A. We have sufficient facilities set aside and operating in this territory to take care of our present contracts.

Q. That is, your contracts with the Public Service Gas Company of New Jersey—

A. Yes, sir.

Q. And your Philadelphia contract?

A. Yes, sir.

Q. Are you still selling Boston?

A. I think not. I believe our contract there has expired; I didn't notice the date.

Q. Are you selling now in Baltimore?

A. Yes, I understand we are supplying the Baltimore Gas Works.

Q. Is it a fact that your three big contracts are the Public Service Gas Company, and Philadelphia and Baltimore? 30206

Mr. O'Brien: Objected to as assuming something that is not in the record. Counsel is trying to confine the witness's statement to something he has in mind, that the only business they do are these three old time contracts. He hasn't testified to anything like that, and that question assumes it.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. Yes, they are our three largest gas oil contracts. 30207

Q. Do you know what is the total requirements of these three gas companies?

A. No, I do not.

Q. It is only a very small part of the total consolidated requirements, isn't it?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial. The witness has said he doesn't know.

A. I don't know the Consolidated requirements.

Mr. O'Brien: He doesn't know himself, Mr. Lyon. Here he is, taking up our time here, and complaining about waste of time.

Q. What is your shipping point for gas oil destined to New York City?

A. Port Arthur, Texas.

Q. Do you know about how long a voyage that is?

A. About eight days.

Q. Is that summer or winter?

A. Well, it will average about eight days either
30209 way.

Q. But with possibilities of winter delays?

A. Always.

Q. Do you own any harbor barges?

A. Yes, sir.

Q. How many?

A. We have four altogether, here.

Q. How many harbor tugs?

A. We have no tugs of our own.

Q. What is the capacity of your harbor barges? Are they all of the same capacity?

A. No, they range from 80,000 up to 125,000.

The Master: That is what you refer to as
30210 lighters?

The Witness: Yes, that is what they are, it is a lighter. We have one pilot boat that will carry about 180,000 gallons.

Q. Is that what you call a sea-going barge?

A. Yes, that is capable of seagoing.

Q. Are all of these barges used in and around New York Harbor?

A. Yes, sir.

Q. This contract made with the Equitable Illuminating Gas Light Company of Philadelphia, De-

fendants' Exhibit AA-68, and the contract made for the other Philadelphia Works, Defendants' Exhibit AA-67, also made in 1913, they together call for 250,000,000 in five years?

A. I am not familiar with those particular two contracts.

Q. You don't know much about them?

A. I don't know much about them.

Q. These contracts provide for delivery not exceeding 50,000,000 gallons in one year and not more than 5,000,000 in any one month. Do you know in point of fact how many gallons your company did 30212
deliver under these contracts?

A. Not at all; that is not in my district.

Q. You did not mean to testify then this morning that these contracts were carried out?

A. Yes, because we have always carried out every contract we ever made with the U. G. I. on the Public Service Gas Company; I know that as a general fact.

Q. Haven't you ever been informed that all that your company actually delivered under these contracts of the 250,000,000 gallons was 225,323,000 gallons?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial; the witness has an- 30213
swered that question twice.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. I would say that the contracts were carried out to the satisfaction of both parties.

Q. Was the contract quantity delivered?

A. I could not say as to that.

Q. Didn't you overhear that your company failed to deliver the contract quantity by approximately 25,000,000 gallons?

30214 Edward A. Lyon, Cross.

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial and as having been already answered.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. No, I had heard nothing of it at all.

Q. Didn't you know that in 1917 and 1918 and 1919 the Equitable Company had to go out in the open market and buy gas oil to take the place of that which was not delivered?

Mr. O'Brien: Objected to as being Mr. Ran-
30215 som's testimony and nothing to that effect in the record. The witness has answered this question three or four times.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. I have no knowledge of it.

Q. Will you say that that has never been discussed with you or mentioned to you by any of the officers of the Gulf Refining Company?

Mr. O'Brien: Objected to as calling for a hearsay answer.

The Master: Objection overruled.

Mr. O'Brien: Exception.

30216 A. That distribution was not in my territory, and I cannot recall that anything was ever said in regard to any lack of delivery, or failure to deliver.

Q. Then you never heard from any source that the Equitable Company by reason of this shortage in delivery had to go into the open market and pay prices in excess of eight cents per gallon for gas oil?

Mr. O'Brien: Objected to as incompetent.

The Master: Objection sustained; the question has already been asked and answered several times.

Q. Did you ever hear from any source that the subsequent contract between your company and the Equitable Company was made upon such a basis as to take into consideration the nondelivery under the five-year contract, and the fact that the Equitable Company had had to buy a large quantity of oil at a price around eight cents?

Mr. O'Brien: Objected to.

The Master: The question will be allowed if he knows.

Mr. O'Brien: Exception.

A. I know nothing of those negotiations.

30218

Q. You did not mean here then to testify this morning in response to Mr. Chambers that you knew that these contracts, 67 and 68, had been carried out by your company?

Mr. O'Brien: I object to that.

The Master: That has been asked and answered, hasn't it?

Mr. Ransom: He said that he did, and now he claims that he didn't. These defendants have had these contracts for two or three days, so I have not been able to see them, and I am having some little difficulty—

The Master: Take your time.

30219

Mr. Chambers: We tried to offer them in evidence a few days ago and met with an objection.

Q. With respect to the contracts with the Public Service Gas Company of New Jersey, do you know under what candle power conditions that company was operating at the time these contracts were made?

A. I do not.

Mr. Chambers: I object to that as immaterial.

The Master: The witness says he doesn't know.

Q. You don't know the conditions the Philadelphia Company was operating under so far as public regulation as to candle power was concerned?

A. I do not.

The Master: What has that got to do with it?

Mr. Ransom: It has considerable to do with the quality of oil.

The Master: If they agreed to deliver from 28 to 34 gravity in some of these contracts, it doesn't make any difference what candle power they had to serve, does it?

30221 Mr. Ransom: None of these contracts that I have yet seen contain any such requirement.

The Master: Oh, all right.

Mr. Chambers: You had better take another look.

Q. The two Equitable contracts which I have so far examined do not appear to have any Beaume gravity provision?

Mr. Chambers: I move to strike that out.

Mr. O'Brien: I ask the witness to be sworn, your Honor.

Mr. Chambers: The contracts speak for themselves on that. I object to counsel testifying.

30222 The Master. I will look at them if there is any argument.

Mr. Chambers: I object to counsel taking up the time to pass his judgment on the contents of the exhibit.

The Master: Go on, next question.

Q. With respect to Exhibit 59, Defendants' Exhibits AA58, 60, 61 and 63, the contracts with the Public Service Gas Company of New Jersey, were the contract quantities delivered under those contracts?

A. I could not say as to the exact volume. The contracts were carried out to the mutual satisfaction of the Public Service and ourselves.

The Master: So you believe?

The Witness: Yes.

The Master: You never heard of anything else?

The Witness: We never had any litigation or trouble with them.

The Master: But you don't know whether there are some matters that have not been adjusted?

The Witness: No, I could not say, to be purely technical. 30224

Q. Wasn't there a failure on your part to deliver the contract quantities during parts of 1917, 1918 and 1919?

Mr. O'Brien: I object to that as incompetent.

The Master: I will let the witness repeat again what he has already said, that he doesn't know anything about it.

Mr. O'Brien: He has made clear that these contracts were really made by Mr. Nutty.

Mr. Ransom: That was my objection when they were put in.

The Master: I will let the witness say.

The Witness: My recollection is that during the war, when the Government had something like 50 per cent of our ships, we could not give the Public Service at that particular time all the oil that they required. I believe that on one or two occasions they went outside and bought oil. I do not believe the amount was appreciable, compared with the total of the contracts. 30225

The Master: It might have been a very serious matter if they did not get it after that particular time, might it not?

30226 Edward A. Lyon, Cross.

The Witness: Well, we rather felt that they were panicky.

The Master: That they were panicky?

The Witness: Yes.

Q. Isn't it a fact that the proportion of your failure to deliver as to the Public Service Gas was about the same as to the Equitable?

A. I cannot say for the Equitable. I know nothing of them.

Q. Well, can you say how many million gallons to which this company would have been entitled under these contract terms to the Public Service Gas 30227 Company you did fail to deliver at the contract time?

A. No, I cannot say how much they purchased outside.

Q. Nor can you say what price they paid for it?

A. No.

The Master: You have, however, a very distinct impression in your mind that they became panicky on one or two occasions?

The Witness: As I recall it, it was only over a comparatively short period.

The Master: What happened at that time? Let us hear something about that, how bad was 30228 the panic?

The Witness: Well, all I recall is this, that they wanted to build up their reserve stock simply as a matter of insurance.

The Master: What brought that about?

The Witness: Because we were not giving them oil as fast as they wanted it.

The Master: How long a period did they cover?

The Witness: I could not recall.

The Master: Weeks or months?

The Witness: Oh, I should say that wasn't over a month or something of that sort.

Mr. O'Brien: What year, Mr. Lyon, 1917 or 1918?

The Witness: 1918, I think.

Q. During the recent harbor strike, for instance, how did you operate your barges and tugs?

A. Well, we happened to have at that time a towboat company that was not involved in the strike, that were operating.

Q. Did you keep a full—

A. Yes, we kept them going. 30230

The Master: What company was that?

The Witness: The Kennedy Towing Company.

Q. Do you know what price the Public Service Gas Company had to pay for the gas oil which it bought outside?

A. I do not.

Mr. O'Brien: I must object to that, because you certainly know these questions cannot be asked. You could not prove that price, and you would not allow us to prove that price in that way, and there is no use asking the question.

The Master: Next question. 30231

Q. Do you know at what price gas oil could have been obtained at that time from any source?

A. I cannot recall now. We were entirely out of the market.

Q. You were entirely out of the market?

A. Yes.

Q. Wasn't the price at least eight cents at that time?

Mr. O'Brien: Objection.

The Master: I will sustain the objection to that. The witness says he does not know.

Q. In your contract with the Public Service Gas Company, have you ever specified 28 to 34 gravity?

A. I could not say without referring to the contracts.

The Master: The contracts will show that, won't they, if they do?

The Witness: If it is there, yes, naturally.

The Master: I will look at the contracts myself later, on this subject.

Q. Take, for example, the contract, Defendants' Exhibit AA57, delivery of either Solar or crude fuel
30233 oil. There was no specification of quality either as to gravity or otherwise in that?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial, the contract speaks for itself.

The Master: The contract speaks for itself.

Mr. Ransom: Well, I wish to develop the point with respect to these contracts which have been received, both the New Jersey and the Philadelphia contracts, and at least some of these New York contracts—

Mr. Chambers: Do you challenge the quality of the Gulf Refining Company's oil?

30234 Q. Do you know what—

Mr. O'Brien: Finish that sentence, Judge, won't you—one of the points you were going to develop. You went off on a tangent there.

Mr. Ransom: I was interrupted by the volume of comment by all of the counsel on the other side, except Col. Hayward.

Mr. O'Brien: Well, do you challenge the quality of this oil?

Mr. Ransom: I don't know anything about it.

Mr. O'Brien: Well, you cannot go on a fishing excursion with this witness.

Mr. Ransom: This is your witness, you sponsored him.

The Master: Do you know what the quality of the oil is, delivered on these various contracts, Mr. Lyon?

Q. I call your attention to this 1917 contract. Was there anything in your contract which required any particular Beaume gravity?

Mr. O'Brien: Objected to on the same grounds. 30236

The Master: Objection sustained. It speaks for itself. I will look at it and see. Do you know what the quality of oil was, what the Beaume gravity was, delivered under these contracts?

The Witness: Gravity is not mentioned there. He seems to have had the option of either taking the crude oil, which was probably a Texas oil, or the Solar oil, which was a distillate Texas crude.

The Master: In all of these contracts which have been offered here where nothing was said regarding the gravity of oil, can you say what Beaume gravity oil was delivered under those contracts, or what was contemplated? 30237

The Witness: I think yes, generally speaking, I am pretty familiar, at least immediately around here, but not in Philadelphia.

The Master: How about Philadelphia?

The Witness: I say I would not know what was delivered in Philadelphia.

The Master: You would not know about Philadelphia?

The Witness: No.

The Master: What would you know about this Public Service gas?

The Witness: Well, we delivered there what was known as our 30 gravity gas oil.

The Master: It was known as that?

The Witness: Yes, that was our name.

The Master: Did you ever test it, though?

The Witness: Yes; it averaged from 26 to 30 Beaume.

The Master: It did not run any higher than 30?

30239 The Witness: No.

Q. And you were not required to deliver even 26?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial, the contract speaks for itself, the Master so ruled three times.

Mr. Ransom: This is cross-examination of your witness.

The Master: Objection sustained.

Mr. Ransom: Exception.

The Master: Under the contract they were not obliged to give any Beaume gravity. As I understand the witness's testimony it is that under contracts where nothing was said they delivered
30240 what they knew to be 30-degree gravity oil, which weighs from 26 to 30, but were not obligated to do it.

Q. Do you know what the present quotation of Oklahoma crude is?

A. Yes, $3 a barrel of 42 gallons, at the wells there.

RE-DIRECT EXAMINATION BY MR. CHAMBERS:

Q. The period you spoke about when these letters were written, the trouble was with your ships, your shortage of ships?

A. Yes.

Q. They had been taken by the government?

A. In one of those letters that was the case, yes.

The Master: That was not so in 1918, November and December, and 1919, November and December?

The Witness: In 1918, that was the case, as I recall; in 1919, that was not the case, the government had nothing to do with it.

Q. I understood you said that your storage capacity across the river was approximately 20,000,000 gallons?

A. Yes. 30242

Q. You stated it in barrels?

A. Yes.

Q. During those times these last few years, you made these contracts with the Public Service Gas and the Equitable Gas Light Company to supply oil, you had that much, you were able to make contracts for that amount of oil covered by those contracts?

A. I did not get your question?

Q. You had oil to sell during these last few years?

A. Yes.

Q. And you sold some of it to the Equitable and some to the Public Service Gas in those quantities?

A. Yes. 30243

Q. Did you have some reason why you did not want to sell all your oil to one company? Was there anything about that?

A. I cannot remember. They would not as a general proposition want to anyhow.

Q. You did not want to sell your whole output to one concern, did you?

A. No, as a matter of policy we would not.

Q. And what would you say, if anything, as to whether—Oh, if the Consolidated Gas Company ap-

plied to you for oil in quantities smaller than 200,000,000 or 250,000,000, what would you say as to whether you could have supplied them in smaller quantities?

A. It all depends on when the inquiry might have come in. We might have, and we would have been willing, if we had the oil, to have supplied them at a price satisfactory to ourselves.

Q. The same as you supplied the Public Service Gas and the Equitable?

A. Yes.

30245 Q. And the Boston Consolidated?

A. Yes.

Q. Now, 200,000,000 or 250,000,000 is an enormous quantity of oil, isn't it?

A. We will call that a good deal, yes.

Q. Would you say whether these oil companies under the circumstances under which they produce and sell would you say that a gas company in contracting for its supply of oil, if its requirements were less than that could deal more advantageously than if they required that amount?

Mr. Ransom: Objected to, incompetent.

Q. Which would you say?

30246 The Master: I will allow it.

A. I should say they would prefer the lesser amount.

Q. Would you think it would be a disadvantage for a gas company to try to buy oil in such a large quantity as two hundred or two hundred and fifty million gallons?

Mr. Ransom: Objected to as immaterial; the Consolidated did not undertake to do any such thing.

Q. Buying for all these companies, you claim it is an advantage? The actual requirements of the Consolidated is small compared with what they buy?

The Master: I will allow it.

Mr. Ransom: Exception.

A. No, that would not be a disadvantage.

Q. You think it would be an advantage?

A. Rather so, yes.

Q. And the company could supply such a large quantity?

A. Of course, that depends upon the company. Not many companies could do that.

Q. Well, the number of companies that could suppiy that amount is very limited, isn't it?

A. Yes. 30248

Q. And to that extent it would be a disadvantage?

A. It would be to the company, yes, that is to the oil company.

Q. Oh, yes, to the oil company.

A. Yes.

Q. They could not make the contracts, but they could supply a lesser quantity?

A. Absolutely.

Q. And if you had the oil, you were willing to enter into contracts for the quantity that you could supply during those times?

A. Yes.

Q. Now, what is—comparing your oil with—your gas oil with the Standard, do you know how it compares? 30249

Mr. Ransom: What standard?

Mr. Chambers: The Standard Oil of New York?

A. No, I could not say as to that. Generally speaking, there should not be a great deal of difference, but that is a matter I could not pass upon.

Q. Do you know of any oil furnished by your company that was 26 degrees specific gravity?

A. Gas oil?

Q. Yes.

A. I cannot recall.

Q. You aim to keep above that?

A. Yes, that is our standard.

Q. All your oil is between 26 and 30, isn't it?

A. Yes, one grade is, and the other grade will run about 30 or 32.

The Master: Is that a higher price?

The Witness: Yes, there is a differential.

The Master: How much higher?

The Witness: Oh, roughly, about a half-cent

30251 a gallon.

Q. That is the higher the specific gravity, the more you get for it?

A. Yes.

The Master: Do you make any from 32 to 34?

The Witness: No.

The Master: You don't do that at all?

The Witness: No.

The Master: If you did, I suppose it would be still a higher price, would it?

The Witness: Yes.

The Master: The higher the gravity, the

30252 higher the price, is that the idea?

The Witness: Yes.

Q. What crude oil did you have in mind that you supplied, from what field?

The Master: He said Louisiana, Texas and Oklahoma.

Q. And do you know the specific gravities of those different ones?

A. I cannot tell you. The crudes vary more or less.

Q. Did you have any complaints from this companies that your oil was not of the required specific gravity?

A. I cannot recall any from any companies.

Q. Can you recall at any time, except the short period you mentioned, or was there any that you know of, when you were unable to ultimately fulfill your contracts for oil which you contracted to sell?

A. No, I cannot recall any such period.

Q. Your recollection is that you were always ready and willing to supply the oil, and you did so supply it? 30254

A. Precisely. The reason we did not in that case was because the government had commandeered the ships.

Q. When you speak of this gas company being panicky, that was no fault of your company?

A. Not at all.

RE-CROSS EXAMINATION BY MR. RANSOM:

Q. When you speak of 20,000,000 storage capacity at Bayonne, is that 20,000,000 storage capacity for gas oil or all oils?

A. That is the total storage.

Q. That is not merely gas oil?

A. No. 30255

The Master: How much for gas oil?

The Witness: Oh, I should say about 160,000 to 170,000 barrels.

The Master: That would be how many gallons?

The Witness: 42 gallons, about 6,000,000 gallons.

The Master: About 6,000,000 gallons?

The Witness: Yes.

30256 Edward A. Lyon, Re-cross.

Q. Do you remember a time when you supplied the Queens Borough Gas & Electric Company some years ago, before the war?

A. Yes, I recall I did have a contract with the Queens Borough.

Q. Did you fail to deliver under that contract?

A. Not that I can recall.

Q. Isn't it a fact that you did so fail?

A. I do not remember.

Q. You won't say that you did not?

A. No, since you beg the question, but I do not
30257 recall that we failed in any particular of it.

Q. Even for Mr. Rosenquest's small quantity for the Bronx Gas & Electric Company, you were not able to quote a price for 1920, better than 7.75?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial and argumentative.

The Master: I will allow it.

Mr. O'Brien: Exception.

A. We could have quoted less, but we did not want to.

Q. Would not have been regarded as profitable or advantageous?

The Master: That was your price?

30258 The Witness: That was our price.

Q. And on a quantity as low as 15,000,000 gallons, you did not want to, you could not bid at all?

Mr. O'Brien: Objected to.

The Master: This is argumentative. We have been over that. I will sustain the objection.

Mr. Ransom: Exception.

HERMINE PEITER recalled.

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. I show you a paper bearing date October 18, 1907. Do you recognize the signature of William Flook?

Mr. Ransom: I object to the question. She does not know the signatures of these people.

The Master: She will say so if she does not.

Q. You are from the Kings County Lighting Company?

A. No, I am from The Texas Company. 30260

Q. Do you recognize the signature of this man (indicating)?

A. C. E. Woodbridge.

Q. What is his business?

A. Sales manager.

Q. In this territory?

A. Yes.

Q. And that is his signature?

A. Yes.

Q. I show you another paper dated October 18, 1907. Whose signature is that for The Texas Company (indicating)?

A. C. E. Woodbridge. 30261

Q. The same one?

A. Yes.

Q. Is that his original signature?

A. Yes, sir.

Q. He is the same person you described a minute ago?

A. Yes, sir.

Q. I show you a paper dated October 17, 1916. Is that Mr. Woodbridge's signature for The Texas Company?

A. Yes, sir, it is.

30262 Stephen J. Hanley, Direct.

Q. His original signature?

A. Yes, sir.

Q. You do not know Mr. Flook's signature?

A. No.

Mr. Chambers: I ask that these papers be marked for identification in the order in which I describe them, and that is all.

Marked respectively, Defendants' Exhibits AA71, AA72 and AA73 for identification.

30263

STEPHEN J. HANLEY, called as a witness in behalf of the defendants, being duly sworn, testified as follows?

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. You were at one time Deputy Tax Commissioner?

A. Yes, sir.

Q. You are not now?

A. No.

Q. And did you obtain that office of Deputy Tax Commissioner as the result of a competitive examina-

30264 tion?

A. Yes, sir.

Mr. Ransom: Just a moment, I want to place on the record my protest at the course of counsel for the Attorney General. There are a large number of witnesses here who have been subpoenaed and been sitting here all day, officers of various companies, and this turning aside to resume on these tax commissioners, who are not here under subpoena but—

Mr. Chambers: Now, that is false right there. You were subpoenaed, weren't you?

30265

The Witness: I got $2.50 and a subpoena, and I wasted all day here. Every man you are talking about is on somebody's pay roll; I am on my own pay roll, and $2.50 does not compensate me for sitting around here all day.

Mr. Chambers: See how wild that statement was, without any basis for it.

The Witness: They are all on some pay roll.

Mr. Chambers: I do not think I will reach anybody this afternoon except these Deputy Tax Commissioners who are not under subpoena, and who can afford to sit around here and who are here waiting. I suggest that all the gas companies I have subpoenaed and all the oil companies go until tomorrow.

30266

The Master: I am not going to permit anybody to go. It is up to you to fill in the day.

Mr. Chambers: You have heard counsel's protest.

The Master: I do not care anything about counsel's protest; it is up to you to furnish testimony to fill up the day.

Mr. Chambers: I hope you agree with me it is a mere waste of words, without any basis back of it.

30267

Q. You say you were subpoenaed to attend here?

A. Yes, sir.

Q. You were here all this forenoon waiting to be called?

A. Since half-past nine.

Q. You obtained your office of Deputy Tax Commissioner as the result of a competitive examination?

A. Yes, sir.

Q. What year, do you remember, Mr. Hanley?

A. 1904.

Q. And you were in the department previously, from that time until when?

A. I was in the department before that as a clerk, from 1899 to 1904, and I was out a month and a half in the Bureau of Licenses or Commissioner of Licenses' office, when I went back in the department in 1904, and stayed there until the 6th day of January, 1916.

Q. You took oath of office as Deputy Tax Commissioner and during the time you were Deputy Tax Commissioner you had occasion to fix the value on certain property in your district?

30269 A. Yes, sir.

Q. Did you operate in more than one district?

A. Yes, I was in the Bronx from 1904 to 1910; I was in Manhattan from 1910 to 1916.

Q. When did you leave the department?

A. The 6th day of January, 1916.

Q. And you have been out of the department since?

A. Yes, sir.

Q. Since you have been out of the department you have been in the real estate business?

A. Insurance and real estate.

Q. While you were in the department did you keep yourself posted on land values?

30270 A. Yes, sir.

Q. And rentals of real estate?

A. Yes, sir.

Q. And sales of real estate?

A. Yes, sir.

Q. And the sales of improved real estate?

A. All kinds of sales, wherever I could get any information at all.

Q. And rentals and leases?

A. Yes, sir.

Q. I call your attention to Block 231, Lot 1 (handing witness book)?

A. Block 238, I think you mean.

Q. No, it must be Block 231, Lot 1.

A. Block 231, Lot 1, is on the corner—

Q. Block 239, I mean, Lot 1, for the year 1911?

A. Yes, sir.

Q. Did you visit that lot?

A. Yes, sir.

Q. And was it 100 feet on Elizabeth Street by 100 on Hester Street?

A. You will have to show me the map if you want me to answer that. I assume it was.

Q. While I am getting that I will ask you another question. You visited that lot and assessed it for the 30272
1911 taxes?

A. Yes, sir.

Q. And the 1912 taxes?

A. Yes, sir.

Q. And the 1913 taxes?

A. Yes, sir.

Q. And the 1914 taxes?

A. Yes, sir.

Q. And that is as long as you assessed that?

A. In that district; yes sir.

Q. And Lot 5 in that same block?

A. Yes, sir.

Q. You assessed that for the same years? 30273

A. The same years.

Q. You visited both pieces of property?

A. Yes, sir.

Q. And you saw the buildings on there?

A. Yes, sir.

Q. And examined them?

A. Yes, sir.

Q. After looking at the buildings did you then place a valuation on that lot, unimproved?

A. Yes, sir.

Q. And with improvements thereon?

A. Yes, sir.

Q. Also Lot 5, unimproved and with improvements thereon?

A. Yes, sir.

Q. What valuation did you place on Lot 1 for the tax of 1911, wholly unimproved?

A. I cannot tell that without seeing the record book. This book does not carry the land value of each year. I assume the total is the same all the way through.

30275 Q. And for 1911, 1912, 1913 and 1914, Block 239, Lot 1?

A. It is the same for all four years, $93,000 on the land.

Q. How much on the land?

A. $93,000.

Q. For each of the four years?

A. For each of the four years.

The Master: Lot 1?

The Witness: Lot 1; yes, sir.

Q. Then you assessed it with improvements thereon?

A. Yes, sir.

30276 Q. What did you find on it, do you remember?

A. A building, a three-story building. The size is given here as 60 x 75 feet.

Q. And you placed a valuation upon that?

A. Yes, sir.

Q. What value for each of the years?

Mr. Vilas: I object unless it appears that there are or are not fixtures and machinery involved in this.

The Witness: No, there is no machinery there.

The Master: Objection overruled. I know that corner and I know there is no machinery in that.

A. $12,000, making a total of $105,000.

Q. For each of the years?

A. Each of those four years.

Q. What is the value of the land on Lot 5?

A. $40,000 on the land.

Q. For each of the years?

A. Each year.

Q. That is 1911 to 1914, inclusive?

A. Let me be sure of that again (examining book). $40,000 on the land and $10,000 on the building, making a total of $50,000, for each of the four years.

30278

Q. The sums that you have given for Lot 1 a minute ago, for four years, are those the sums for which in your judgment that land would have sold at those times, if wholly unimproved?

A. Yes, sir; I have made an affidavit to that effect in the back of each of these books.

Q. The sums you have given for Lot 5, Block 239, are those the sums for which that property would have sold under ordinary circumstances at those times in your opinion?

A. In my judgment; yes, sir.

Q. The sums you have given for Lot 1 and Lot 5, wholly unimproved, are those the full value of the property in your judgment?

30279

A. That was the full value of the property, in my judgment.

Q. The sums you have given for Lot 1 with the land plus the value of improvements, the total, are those the sums for which in your judgment that property would have sold if improved?

A. Yes, sir.

Q. Lot 5, Block 239, the sums which you have given for that piece of property with the improvements thereon, are those the sums for which in your judg-

ment that property would have sold under ordinary circumstances?

A. Yes, sir.

Q. Was it the full value of the property in your judgment with the improvements thereon?

A. I considered that it was.

Q. You say you have not any size for the lot?

A. The book describes it as 100 x 100, but sometimes—my impression is there is a little irregularity in the back of that lot. But generally speaking, that is the size.

30281 Q. That is correct?

A. Yes.

Q. How is the other Lot 5, does your book say 50 x 100?

A. 50 x 100.

Q. Did you have some note on it?

A. I have got a rough sketch that I took from Brownley's Atlas, and it just shows—

Mr. Vilas: Just a minute, I object to that. The witness started to testify from some notes taken from Brownley's Atlas, which I object to.

The Witness: My impression is there is some very slight irregularity in the lot.

30282 The Master: Have you got a memorandum of it?

The Witness: I have one taken from Brownley's Atlas. It shows 99 feet 11 instead of 100. It is four lots.

Mr. Chambers: I will go right on.

Q. Block 1177, Lot 21, for 1915 and 1916. Did you visit that lot in 1914 for the 1915 tax?

A. Yes, sir.

Q. And in 1915 for the 1916 tax?

A. Yes, sir.

Q. What value did you place upon the lot as you found it in 1915?

Mr. Vilas: Unimproved?

Mr. Chambers: Wholly unimproved.

A. In 1915, $225,000 for the land.

Q. And in 1916?

A. In 1916 the land $265,000.

Q. Are those sums the sums for which in your judgment that property would sell under ordinary circumstances if wholly unimproved?

A. Yes, sir.

Q. What was the sum for the first year? 30284

A. $225,000.

Q. And the second year?

A. $265,000.

Q. Can you tell me the dimensions of it?

A. Well, the field book shows 200 feet 10 inches by 343 feet 9, irregular.

Q. What improvements did you find on Lot 21, Block 1177, for those two years?

A. The field book shows under the column "Size of House" 90 by 70 feet, two-story building, four of them; 38 by 23, one-story, one building; 50 by 40 feet 8 inches, two buildings—no, rather two stories high; another building one-story, 40 by 25, marked a garage: 30285 an extension 96 by 16, a shed. The building 50 by 40 feet 8 inches and the extension 96 by 16, I have a memorandum which indicates they are fireproof buildings.

Q. And you valued those buildings, did you?

A. Yes, sir.

Q. You did not value any machinery, did you?

A. No, sir; I do not think there was any machinery in there. (Examines book.) No, there is machinery in there; that is my recollection of it.

30286 Stephen J. Hanley, Direct.

Q. For 1915 taxes, what value did you place on those buildings?

A. $25,000.

Q. And the next year, 1916?

A. $25,000.

Q. The sums which you have given me for that lot unimproved, are those the sums for which it would sell in your judgment under ordinary circumstances at those times?

A. Yes, sir.

Q. And they are the full value?

30287 A. Why, yes, sir, I so swore to that in the books.

Q. And the sums you have given for Lot 21, Block 1177, for the land value, and then the improvements thereon, are those the sums for which it would sell if so improved, in your judgment?

A. Yes, sir.

Q. And the full value of the land with the improvements thereon?

A. I believe it would be.

Q. You gave me the dimensions as irregular. Between 65th and 66th Streets, is it not?

A. Yes, sir.

Q. And you visited it at the time you placed this

30288 valuation upon it?

A. Yes, sir.

Q. Now, Block 1157, Lot 1, did you assess that for the 1915 and 1916 taxes?

A. Yes, sir.

Q. It occupies the whole block, does it?

A. Yes, sir, between West End Avenue and Amsterdam Avenue, 65th and 66th Streets.

Q. What value did you place upon that lot for the 1915 taxes, wholly unimproved?

A. 1915, $700,000 for the land.

30289

Q. And for the 1916 taxes?

A. For the land, $730,000.

Q. Are those the sums for which that property would sell, if wholly unimproved, at that time, under ordinary circumstances?

A. I believe it to be.

Q. And it was the full value of the property as of those dates?

A. Yes, sir.

Q. Can you give me the units you used for the land? What I want to do is to cut off the rear 300 feet on Amsterdam Avenue, separate the two, on your units?

30290

A. There is a memorandum here, eight lots on Amsterdam Avenue at $16,000.

Q. What width and depth?

A. 25 by 100.

Q. Anything for corners and plottage?

A. Just let me finish that. That eight lots at $16,000, makes $128,000. I am assuming this to be right, I haven't checked it up. Corners, $16,000, that is, 50 per cent for each corner. Eight lots on West End Avenue at $14,000 a lot. That would be $112,000; two corners 50 per cent of an inside lot, makes $14,000; 24 lots on 65th Street at $8,000, that would be $192,000; 12 lots on 66th Street at $8,000, $96,000; 12 lots on 66th Street, $9,000 each $108,000. That makes a total of $666,000. Plottage 10 per cent, $64,000, total $730,000. I assume that to be right. I have not seen this book in a number of years.

30291

The Master: Which were the $9,000 lots on 66th Street?

The Witness: The Amsterdam Avenue end is the better. In the last year there was a flat $8,000 on it, that is for 1915. In 1916 I graded it from $320 a lot to $360 a lot. It got a little bit better as you go up from the river.

Q. Your units for 1916 were a little different?

A. Yes, sir.

Q. The units you gave me were for 1915?

A. No, for 1916.

Q. Have you the units for 1915?

A. I know what they were, but I haven't got the analysis of the assessment, I don't think. In 1915, $320 a front foot on 65th Street. In 1916, $320 a front foot on 65th Street. There was no change there. On 66th Street, or rather West End Avenue, $560 in both years. In 1915, 65th Street was $320 a
30293 front foot all the way through the block. In 1916 I graded that from $320 at the West End Avenue end, to $360 a front foot at the easterly end of the block.

The Master: For those twelve lots?

The Witness: Yes.

Q. The plottage was the same?

A. In 1915, on Amsterdam Avenue, $640, both sides. In 1916 I increased that to $720 for both sides.

The Master: And you took one-half for the corners, and added 10 per cent for plottage?

A. Yes, sir.

Q. If those units are applied to the 500 feet on
30294 West End Avenue, then whatever sum is obtained would be in your judgment the full value of the property at that time?

Mr. Vilas: I object to that. He has not made an appraisal of the property at that time or expressed his judgment by an assessment.

The Master: I will allow it.

Mr. Vilas: Exception.

A. That is my opinion as to the value of the property.

Q. And if the units are correctly applied on the 500 feet on West End Avenue—

A. There is no 500 feet.

The Master: He is taking it arbitrarily 500 feet deep. Putting it the other way, the units you have given is what you felt in your opinion were the unit values?

The Witness: Yes, sir.

Q. That it would sell for under ordinary circumstances?

A. Yes, sir.

Q. You found some improvements on it, did you not? 30296

A. Yes, sir.

Q. What improvements did you find on it in 1915?

A. The field book has a memorandum, gas holder, engine house and office.

Q. Did you value the office separately from the other?

A. Yes, sir.

Q. What value did you place upon that?

A. I don't know whether I have a memorandum on that or not. May I refer to some notes?

The Master: Yes, refer to anything you have.

The Witness: I have got a memorandum here which says "Buildings $10,000." 30297

Mr. Vilas: I move that that be stricken out.

The Master: Why?

Mr. Vilas: Some memorandum that says "Buildings $10,000" doesn't mean anything.

The Witness: It is a memorandum that I made at the time, it is not something that I just made up.

The Master: Is it your recollection after looking at that that that was the figure that you valued the buildings at?

The Witness: That was the figure for the buildings.

The Master: Not for the machinery or anything else?

The Witness: No, sir.

The Master: That is your best recollection after looking at that memorandum?

The Witness: Yes, sir.

Q. Did you value the holders and everything else on there in addition to that?

A. Yes, this memorandum relates to the increased
30299 valuation which was placed on the property for the year 1916, not by me, but by order of the Board of Taxes and Assessments, as a result of a resolution which they claim they passed on the 13th day of November. I was handed arbitrarily some figures and told to put them in the book, after I had made my sworn assessment. That is what increased the units that year.

By the Master:

Q. For 1915 you assessed the land at $700,000?

A. Yes, sir.

Q. And for 1916 you assessed the land at $730,000?

A. Yes, sir.

30300 Q. Those were your figures?

A. Yes, sir.

Q. That is what you believed to be right?

A. That is what I believed to be right.

Q. I don't care what the Tax Board did afterwards, that is what you believed to be right?

A. Yes, sir.

Q. Now, in 1915, did you value the buildings at $10,000?

A. Yes, sir.

Q. That is what you considered them to be worth?

A. That according to this memorandum is what I considered them to be worth; that is my recollection.

Q. Irrespective of any orders you got from the Department, that is your present recollection of what you valued the buildings at, what you believed them to be worth in 1916?

A. $10,000.

Q. That is your judgment?

A. Yes, sir.

Q. So that in 1915 you believed that the land with the building on it was worth $710,000?

A. Yes, sir.

Q. And in 1916 you believed the land with that building on it to be worth $740,000? 30302

A. Yes, sir.

By Mr. Chambers:

Q. And the sums which you have given for the land plus the value of that building, are those the sums for which the land would sell, with that improvement on it excluding the others, at those times?

A. Yes, sir, if anybody wanted the building; I don't know what they would do with it.

Q. Was it more than one building?

A. My recollection is it was a little office building there.

Q. Do you know where that was?

A. Well, I am inclined to think it was on the north 30303 side of 65th Street about midway in the block, but I am not positive.

Q. Then there was some holders on there?

A. Yes, just a minute. No, that building stood in about the center of the block, the exact center. I refresh my memory by a rough diagram I have here.

Q. You placed a valuation upon all of the improvements there?

A. Yes, sir.

Q. Will you please give me the value of all the improvements on them?

Mr. Vilas: I object to that.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to say what was the value of all the improvements on there at that time in your judgment?

Mr. Vilas: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. You covered 1916, didn't you?

A. Yes, sir.

30305 Mr. Chambers: That is all.

CROSS-EXAMINATION BY MR. VILAS:

Q. You have been testifying from the field books used by you at the time?

A. Yes, sir.

Q. And are the entries which you have been referring today in your handwriting?

A. Those two are—

The Master: I would not waste time on that. I wouldn't care whose handwriting it is so long as he is prepared to say that that refreshed his recollection.

The Witness: I can answer that by making a

30306 short explanation. When I made changes in the book I made them in my own handwriting. If there were no changes, the clerk sometimes made the extensions.

Q. You are satisfied that the figures in the field book are the figures you arrived at? I ask that question because you said "I assume those are right."

A. Yes, those are all my figures. That memorandum I read is in my handwriting.

Q. In reference to Block 1157, did you arrive at the value of the buildings which you have stated by the

30307

use of some factor furnished to you by the Department of Taxes and Assessments?

A. No, I used my own judgment on that. I had a very wide acquaintance among builders, and certain types of buildings I got costs and prices from builders, and afterwards I applied it to either a cubic foot or a square foot basis, and my own judgment told me to allow for depreciation and that sort of thing.

Q. Did you apply then a factor to these buildings which you found on that block on a square foot basis?

A. I don't find any memorandum in the field book as to how the value was arrived at of those buildings. I assume that I did. I usually figure a building on a square foot and on a cubic foot basis, both. One is a check for the other.

30308

Q. You don't remember whether you used a square foot basis or a cubic foot basis in this case?

A. No, sir.

Q. Did you apply the same factor to all the buildings on this block?

A. I assume not, because I have a memorandum here which indicates to me that some of the buildings were fireproof, and others were marked sheds.

30309

Q. Would you make a different factor for a fireproof building.

A. Certainly. There is a memorandum here. These field books are only note books. There is a memorandum here which would indicate to me that I used a $1 square foot. I don't know whether I did or not.

Q. On all the buildings?

A. No, the fireproof buildings.

Q. Isn't that rather a low factor to apply to a fireproof building?

A. I don't know. I didn't think so at the time or I would not have figured it that way.

Q. Did you consider at the time you made that assessment and placed those valuations on those buildings that the amount you placed on them would represent the cost to reconstruct the buildings at that time?

A. Yes, sir, I placed an amount there that allowing for age and depreciation, would be the cost to reconstruct it.

Q. What do you mean by allowing for age and depreciation?

30311 A. I mean this, the minute a building is built and you turn the key in the door depreciation starts in, and good business method require—I presume your company has an amortization fund for these buildings. They have an economic life, and they have a physical life. Sometimes they don't die physically, but economically they are no good.

Q. Do you remember whether you treated these as old buildings or comparatively new buildings?

A. I treated them as I found them; I do not recall now.

Q. You found the buildings kept up in good repair, did you?

30312 A. So I assume.

Q. You don't have any personal recollection at the present time? A. Yes, I have a picture in my mind of the whole place up there, but just exactly what were in these buildings, my recollection of it is that they didn't amount to very much. There are a whole lot of different kinds of fireproof buildings. You can build them for ten cents a foot.

Q. In arriving at this determination that you speak of did you assume a certain length of life for a building of a certain class?

A. On certain classes of buildings, yes. They have an economic life which is entirely different from the physical life. You have buildings down here—they tore the old Tower Building down, it was built less than twenty-five years ago, it was the first fireproof building—

Q. Do you mean to say that the Equitable Building should have 1/25 or 1/20 taken off from its value?

A. Yes, sir. The Government recognizes the principal in the income tax, by allowing you to write off depreciation.

Q. Is that done in the assessment valuations every 30314
year?

A. I don't know what other people do; I always take that into consideration.

Q. You valued the buildings on this block on the same sum for both years?

A. Yes, sir.

Q. And you valued the buildings on Block 239 at the same value for five years?

A. For four years.

Q. Did you use the same principles of valuation on Hester Street that you did up there?

A. Oh, yes, to this extent—you can't go on *ad infinitum* allowing for depreciation. On the Hester 30315
Street buildings, and on these buildings, I considered that I had written off all the depreciation they were entitled to.

Q. When do you reach the point where you consider you have written off enough?

A. That would be different in each case. If you take me out and give me a concrete case I will go out and make an appraisal for you, if you want to pay me for it, I will make an appraisal, and then explain why I made it.

Q. Let us take Hester Street as a concrete case, Hester and Elizabeth. Tell us at what age you concluded that they had reached the rock bottom of depreciation?

A. I considered that the value that I put on a building there—that was my judgment of the value at the time.

Q. It was your judgment of its value for four different years?

A. Yes.

Q. Then it probably had reached the limit of depre-
30317 ciation in your judgment?

A. Yes. It is an old building. If I remember the building right I should say it is 50 years old at least.

Q. It was still in use by the Gas Company?

A. It was still in use by the Gas Company.

Q. And it was kept in a fair state of repair?

A. Yes, but you would not build the same building today if it was torn down or burned down.

Q. Were the figures you gave the figures which in your judgment would represent the cost to reproduce that building?

A. No; it would cost possibly more, but you would not build that kind of a building.

30318 Q. That is not the question. Did you base your figures or arrive at your unit of valuation for any of these buildings that you have testified to with any reference to its rental or income-producing value?

A. There wasn't any rental value that I know of to it.

Q. Did you take it into consideration?

A. I did. I will tell you what I did—

Q. You did take possible income or rental value into consideration in fixing the factor?

A. No.

30319

Q. You did not?

A. No, not in that case. It had no rentable value. The improvement was inadequate. They had 10,000 square feet and a small building there.

MATTHEW J. CAHILL, a witness for the defendants being, first duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Where do you reside?

30320

A. New Brighton, Staten Island.

Q. You were formerly a Deputy Tax Commissioner of the City of New York?

A. Yes.

Q. At what time, between what time?

A. 1913, '14, '15 and '16.

Q. And you left the department then in 1916?

A. Yes.

Q. And you were appointed to that office after an examination?

A. Yes.

Q. Competitive examination?

A. Yes.

30321

Q. And you took an oath of office?

A. Yes.

Q. Before that time, what business were you in?

A. Real estate.

Q. In the City of New York?

A. In Staten Island and in the City, yes.

Q. Staten Island and in the City, buying and selling real estate?

A. Yes.

Q. You kept track of the sales, did you, and mortgages?

A. I did.

Q. And rentals?

A. Yes.

Q. Leases?

A. Yes.

Q. Both improved and unimproved?

A. Yes.

Q. How many years before you were Deputy Tax Commissioner, were you in the real estate business?

30323 A. Six years.

Q. While you were a Deputy Tax Commissioner, did you visit Block 951, Lot 35?

A. I did.

Q. You made an assessment upon the block and lot?

A. Yes.

Q. For the years 1914 and '15?

A. Yes.

Q. Will you please state what valuation you placed upon that lot for the tax of 1914 unimproved?

A. $62,000.

Q. And for the tax of 1915, wholly unimproved?

30324 A. There was improvements on then.

Q. Give me the value without improvements?

A. $62,000.

The Master: For the following year, too?

The Witness: $62,000.

Q. For each of those two years?

A. Yes, the same for 1915.

Q. And those sums which you have given, were those the sums for which that property would have sold, in your judgment, wholly unimproved at those times?

A. Yes.

30325

Q. Was it the full value of the property in your judgment?

A. Yes.

Q. Now, was your property 176 feet on 20th Street by 92 feet deep?

A. Yes.

Q. Both years?

A. Yes.

Q. You found some improvements on there for those years?

A. Yes.

30326

Q. Did you assess that property with improvements on?

A. I did.

Q. What did you find on the lot?

A. It was a building 32 x 176.

Q. That is all?

A. That is all.

Q. For those two years?

A. Yes.

Q. What value did you place upon it for the 1914 tax, with improvements on it?

A. $7,000.

Q. That is $7,000 for the building?

30327

A. Yes.

Q. And in 1915?

A. The same.

Q. And those sums which you have given together with the value of the land, are those the sums for which that lot would have sold under ordinary circumstances, with the improvements on it?

A. Yes, in my opinion.

Q. Was it the full value of the property, in your judgment?

A. Yes.

Q. Now, Block 952, Lot 7, did you visit that lot in 1914?

A. Yes.

Q. And 1915, and assess it for the 1915 and 1914 tax?

A. Yes.

Q. What value did you place upon that Lot 7?

A. $325,000.

Q. That is wholly unimproved?

A. Yes.

Q. And for the 1915 tax, what value?

30329 A. The same.

Q. Are those the sums for which it would have then sold, in your judgment, if wholly unimproved?

A. Yes.

Q. Under ordinary circumstances?

A. Yes.

Q. Was that the full value of the property in your judgment?

A. Unimproved, yes.

Q. Now, can you give me your unit of value, so that I can cut off the—can you give me the dimensions of that piece?

A. 446 feet 6 inches by 184 feet, irregular.

30330 Q. Now, the improvements for 1914, what were the improvements?

A. Coal yard and gasometer; that is the coal sheds and gasometer tanks.

Q. Did you value the coal yard separately, the buildings separately?

A. In my computation I did, but I have them down here as one improvement, the valuation.

The Master: Can you give us the figures for the shed separate from that gasometer?

The Witness: No. I put little or no value on them, if my memory serves me right, the sheds,

because it was simply a nominal value, and I valued the gasometers.

Q. That was true of both years, was it?

A. Yes.

Q. Just state what was the value of all the improvements hereon during those years?

Mr. Goetz: Same objection.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Will you give the assessed value, or the value you placed upon the entire property improved?

Mr. Goetz: Same objection. 30332

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, Lot 35, 1914 and 1915, the same block, 952, first of all, was that 65 x 94?

A. 65 x 94, the property yes.

Q. Now, the unimproved value on there?

A. $37,000.

Q. And for 1915 tax?

A. The same.

Q. And there are some improvements on it?

A. There was.

Q. What was on that?

A. I found a building 65 x 49, two stories. 30333

Q. Did you look it over?

A. I did.

Q. And then you placed a value on that building?

A. $10,000.

Q. For both years?

A. Yes.

Q. The sums that you have given for that property for the 1914 and 1915 tax wholly unimproved, are those the sums for which it would sell in your judgment under ordinary circumstances?

A. Yes.

Q. And do those sums represent the full value of that property in your judgment unimproved?

A. They do, yes.

Q. And the sums which you have given for that lot and block are the amounts, with the improvements thereon plus the land value, are the sums for which it would sell at those times, with the improvements thereon under ordinary circumstances?

A. Yes.

Q. The same is true for both years?

A. Yes.

30335 Q. Block 953, Lot 1, that lot occupies the entire block?

A. Yes.

Q. Between Avenue A and First Avenue and East 22nd and East 21st Street?

A. Right.

Q. You visited that property did you?

A. Yes.

Q. For the 1914 and 1915 tax?

A. Yes.

Q. The value you placed upon it for the 1914 and 1915 tax?

A. $560,000 for the unimproved.

30336 Q. Both years the same?

A. Yes.

Q. Does that sum represent in your judgment the sum for which that property would sell wholly unimproved at that time?

A. Yes.

Q. Did you find some improvements on it?

A. I did.

Q. What?

A. I found gasometers on there and other buildings.

Q. And some buildings?

A. Yes.

Q. Did you value the gasometers and the buildings separately there?

A. I did.

Q. And does the value you placed upon the buildings contain any machinery?

A. No, I did not calculate the machinery.

Q. What value did you place upon the buildings alone, excluding the gasometers and any machinery in there?

A. Well, one year, 1914, including the— 30338

The Master (interrupting): Have you got any separate figures for the building alone?

The Witness: No, I have not.

The Master: You cannot give it to us?

The Witness: No, not now. I did at that time.

The Master: But you cannot give it to us now?

The Witness: No.

Q. For 1916 can you separate them?

A. No.

Q. I ask you to give the assessed value for all the improvements on that block for 1914 and 1915? 30339

Mr. Goetz: Same objection.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, are you able to state what was the value of that lot with the improvements thereon for those two years?

Mr. Goetz: Same objection.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Block 978, Lot 5, can you give me the dimensions of it?

A. 46 by 95 feet 6 irregular.

Q. Corner of Avenue A and East 21st Street?

A. Yes.

Q. Now, you assessed that for 1914 and 1915 tax?

A. I did.

Q. What value did you place upon that block for the 1914 and 1915 tax?

A. $19,000 on the land.

Q. For both years?

A. Yes.

Q. Is that the sum for which it would sell, in your judgment, if wholly unimproved under ordinary circumstances?

30341

A. Yes.

Q. Was it the full value of the property unimproved?

A. Yes.

Q. Were there any improvements on it?

A. There were.

Q. What did you find on it?

A. Small buildings.

Q. Did you value those buildings?

A. I did.

Q. Give the value of those buildings for the 1914 and 1915 tax?

A. $6,500.

30342

The Master: Making a total for each year of what?

The Witness: $25,500.

The Master: Improved?

The Witness: Yes.

Q. And the value of the land plus the value of the buildings, are those the sums for which it would sell under ordinary circumstances in your judgment at those times?

A. Yes.

Q. And are those the full values of the property with the improvements thereon?

A. Yes.

Q. Block 976, Lot 6, was that 184 on Avenue B?

A. 184 by 596, irregular, it is on Avenue B, the west side of 21st Street.

Q. You visited that lot?

A. I did.

Q. And you valued it for the tax of 1914 and 1915?

A. Yes, sir.

Q. What value did you place upon the whole un- 30344
improved for 1915?

A. $365,000.

Q. Both years the same?

A. Yes.

Q. Is that the sum for which that block would have sold at that time under ordinary circumstances, wholly unimproved?

A. Yes.

Q. And was it the full value of it at that time, in your judgment?

A. Yes.

Q. You found some improvements on it?

A. Yes. 30345

Q. What improvements?

A. Buildings and coal yard and other appurtenances.

Q. Did you value the buildings separately?

A. Yes.

Q. What value did you place upon all the buildings?

The Master: You said "and other appurtenances." What are they?

The Witness: Well, coal yards and pockets.

The Master: Coal trestle?

The Witness: Yes.

The Master: Machinery?

The Witness: Yes. I did not value the machinery.

The Master: You did not value the machinery at all?

The Witness: No.

Q. What value did you place on all the improvements now, you say you did not value any machinery?

Mr. Goetz: I object to that unless the question is confined to the buildings alone.

30347 A. $475,000.

Q. That is the improvements you are now speaking of?

A. Yes.

Mr. Goetz: I take an exception to your Honor's failure to rule upon the objection.

Q. The same for both years?

A. Yes.

Q. Now, the sum which you have given for that Lot 6, Block 978 unimproved, and then with the improvements thereon which you have described, is that the sum for which it would sell under ordinary circumstances wholly unimproved?

30348 A. Yes, sir.

Q. Did it represent the full value of the property with improvements thereon for those two years?

A. Yes.

Q. Block 979, Lot 1, for 1914 and 1915, did you visit that block and lot?

A I did.

Q. And you valued it unimproved for each of those years?

A. Yes.

Q. What dimensions have you?

A. We have 197 feet 6 by 751 feet 3, irregular.

Q. Have you got any map there? Into that cuts this Avenue B extension, do you remember that?

A. Yes.

Q. You only valued it up to the Avenue B extended, that line?

A. Yes.

Q. What value did you place upon that block and lot?

A. $430,000 on the land.

Q. Unimproved?

A. Yes.

Q. The same for both years? 30350

A Yes.

Q. And is that the sum for which it would have sold under ordinary circumstances, unimproved, in your judgment?

A. Yes.

Q. And was that the full value of the property in your judgment?

A. Yes.

Q. Now, the improvements, what improvements did you find?

A. I found improvements to the extent of—

The Master: What are they?

The Witness: We found gasometers and 30351 buildings there.

The Master: Did you divide your estimates as between gasometers and the buildings?

The Witness: Yes.

The Master: And machinery and apparatus and things of that sort?

The Witness: No, we did not take the machinery.

The Master: No apparatus?

The Witness: No.

The Master: How much did you assess the buildings without anything else?

The Witness: $1,250,000. Well, I haven't got that separated. I don't know.

Q. You cannot give me the value you placed upon the buildings?

A. No.

Q. You did know at that time?

A. Yes, we figured everything separately, and we made the lump sum for the improvements.

Q. I ask that you give the valuation you placed
30353 upon the lot with improvements thereon for both of those two years?

Mr. Goetz: I object to that.

The Master: Objection sustained because it appears that the figure includes gasometers.

Mr. Goetz: I also ask the Court to strike out the figures which the witness stated before I had an opportunity to object.

The Master: If any figures appear on the record for the land with improvements, I grant the motion to strike out.

Q. You cannot segregate the buildings from the other improvements for 1915 either, can you?

30354 A. Not at this time, no.

Q. Lot 27, same block?

A. Yes.

Q. That is a little piece?

A. Irregular piece.

Q. It is a little triangle?

A. Unimproved.

Q. How much did you value that?

A. $6,000.

Q. How large is that?

A. 40 feet by nothing, it runs to a point.

Q. And you valued that at $6,000?

A. Yes.

30355

Q. For each year?

A. Yes.

Q. Is that the value of that lot in your judgment?

A. Yes.

Q. Full value?

A. Yes.

Q. Is that the sum for which it would sell under ordinary circumstances if wholly unimproved at those times?

A. Yes.

30356

Q. Now, Lot 29, a peculiar little strip, almost nothing?

A. That is exempt.

Q. You exempted that?

A. Charged that to the City of New York.

Q. Owned by the City?

A. Yes.

Q. The same for both years, was it?

A. Yes.

Q. Block 987, Lot 37, the same two years?.

A. Yes.

Q. Do you know the dimensions of it?

A. 184 by 88 by 77, irregular.

30357

Q. And you visited that lot and placed a valuation on it unimproved?

A. I did, $75,000.

Q. How much?

A. $75,000.

Q. For each year?

A. Yes.

Q. Then did you find some improvements on it?

A. I found a small tank on it.

Q. Nothing else but the tank?

A. That is all.

Q. You valued the tank, did you?

A. Yes.

30358 Matthew J. Cahill, Direct.

Q. I ask you to give the value you placed upon the tank?

Mr. Goetz: Same objection.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. What kind of a tank was it?

A. Gas holder.

Q. And are you able to state what was the value of that lot with the tank thereon?

Mr. Goetz: Same objection.

The Master: Objection sustained.

30359 Q. The sums which you have given for that Lot 37, Block 987, wholly unimproved, are those the sums for which it would have sold in your judgment at that time under ordinary circumstances?

A. Yes, sir.

Q. Block 989, Lot 1, what are the dimensions for that?

A. 206 feet 6 inches by 235 feet.

Q. Have you visited that property?

A. I have.

Q. And you placed a valuation upon it for the 1914 and 1915 taxes?

A. Yes, sir.

30360 Q. What valuation did you place upon it for the 1914 taxes, unimproved?

A. $155,000

Q. And for the 1915 tax unimproved?

A. The same.

Q. Are those the sums for which it would have sold under ordinary circumstances at those times unimproved?

A. Yes.

Q. Was that the full value of that property in your judgment?

A. Yes, sir.

Q. Did you find some improvements on it?

A. Yes.

Q. What?

A. I found a gasometer and three buildings.

Q. Did you value the buildings separately from the gasometer?

A. Yes.

Q. What value did you place upon the buildings?

A. In the computation of the improvements we did, but as we placed it here we put the valuation on the entire improvements together.

Q. Could you separate your values? 30362

A. We could not from here, no.

Q. You have not the figures separating the buildings from the other?

Q. We cannot give it, no.

Q. I ask you to say what was the value of that lot with its improvements for those two years?

Mr. Goetz: I object.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. I ask you to say what was the value of that lot with all the improvements for those two years.

Mr. Goetz: Objected to.

The Master: Objection sustained. 30363

Mr. Chambers: Exception. That is all.

CROSS-EXAMINATION BY MR. GOETZ:

Q. Mr. Cahill, in each case in which you gave the figures for the buildings, did you in your valuation allow anything for fixtures or apparatus or machinery in the buildings?

A. No.

Q. Referring to Block 952, Lot 35, where you gave a valuation for assessment of $10,000 for the buildings, do you know what it would have cost to

30364 Matthew J. Cahill, Cross.

build exactly the same kind of buildings, with the same material and the same dimensions, in the years you made your valuations?

A. Well, the valuation I put on that building, if my memory serves me, was the valuation that the property was worth at that time allowing for depreciation.

Q. But you would not say it would have cost only $10,000 to rebuild or reconstruct these buildings at that time?

A. No, it could not have been reconstructed for
30365 $10,000 at that time, the same sized building.

Mr. Chambers: New, do you mean?

Mr. Goetz: New.

The Witness: New, yes. No, it could not be.

Q. How much in your estimation would it have cost to construct those buildings at that time?

A. Well, at that particular time I am of the opinion that instead of $10,000 the buildings would have cost $30,000.

Mr. Chambers: New; that is for new buildings?

The Witness: Yes.

Q. How old did you estimate those buildings to
30366 be?

A. Well, they were quite old. They had reached the period where the line of demarkation had been reached between what was at all good left in the building and where the period of greatest depreciation had been reached. We were down to the minimum on which we could assess these buildings, at approximately 50 cents a square foot factor.

Q. If the Consolidated Gas Company needed buildings at that time and had constructed new buildings exactly of the same size and dimensions, could the Consolidated Gas Company have made any greater use of the new buildings than they did of the old buildings at that place?

A. Pardon me, I do not quite get that clear, Counsellor.

Q. You went into the buildings, did you not?

A. Yes, I went all through them personally.

Q. Do you think that the Consolidated Gas Company could have gotten a greater use out of new buildings of that kind, at that place, than it did out of the old buildings that were there?

A. If they were to build new buildings they would get more benefit out of the new buildings. They would not build that kind of buildings in 1918.

Q. I am taking the same size building, same size 30368
rooms, and the same fittings in the rooms. Do you suppose the Consolidated Gas Company could have done more work or worked to better advantage in new buildings than those at that time there?

Mr. Chambers: I object to that as argumentative, incompetent, and too long drawn out.

Mr. Goetz: I am sorry your mind cannot follow it.

The Master: Overruled.

Mr. Chambers: Exception.

The Witness: Yes, I can follow it all right.

Mr. Goetz: I did not address you, Mr. Cahill.

A. I can hardly associate at that time the Gas 30369
Company putting up a building of that kind for use, because the property would not warrant putting up a small building of that kind there.

Q. No, but so far as the actual use is concerned, could any greater use have been gotten from that kind of a building, that kind of construction and the same dimensions than from the building in place?

A. No, if they were to build the same buildings over again no greater good could have come from them.

Mr. Goetz: That is all.

30370 Patrick J. Cronin, Direct.

PATRICK J. CRONIN, called as a witness in behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Cronin, where are you employed now?

A. In the Borough of Queens.

Q. In the Tax Department?

A. The Tax Department.

Q. You are a Deputy Tax Commissioner?

A. Deputy Tax Commissioner.

30371 Q. How long have you been such?

A. Since 1910.

Q. And before that what business were you in?

A. Clerk in the department, and previous to that estimating for a builder, William B. Pettit, 1215 Broadway.

Q. All kinds of buildings?

A. All kinds of buildings.

Q. Buildings that were erected in the City of New York?

A. All in the Borough of Manhattan.

Q. From that experience have you become familiar with the value of buildings, did you?

30372 A. Yes, sir.

Q. How many years were you with this firm estimating on buildings?

A. A year and a half.

Q. And before that?

A. Before that I was in real estate.

Q. In Manhattan?

A. In Manhattan.

Q. And you obtained your position as Deputy Tax Commissioner after an examination?

A. After a competitive examination.

Q. And you took the oath of office?

A. Yes, sir.

Q. You visited, did you, Block 689, Lot 17, for the 1912 to 1915 taxes?

A. 1912, 1913, 1914 and 1915.

Q. What were the dimensions of the lot and block as you found it in those years?

A. Block 689, Lot 17, 197 feet 3 inches by 379 feet 10 6/8 inches, irregular.

Q. That is, it was 184 feet on Tenth Avenue?

A. 184 feet on Tenth Avenue.

Q. What value did you place upon that lot and 30374
block for the 1912 taxes, unimproved?

A. Unimproved $440,000.

Q. And the 1913 taxes, unimproved?

A. The same.

Q. The 1914 taxes?

A. The same.

Q. The 1915 taxes?

A. The same.

Q. You did not go beyond that?

A. I did not go beyond that year.

Q. Did you find some improvements on the lot and block?

A. Yes, sir. 30375

Q. What improvements did you find upon it?

A. Some brick buildings.

Q. You found some brick buildings on it?

A. Yes, sir.

Q. Did you value those for each of those years, 1912 to 1915, inclusive?

A. Yes, sir.

Q. Was there any machinery in them?

A. No, only buildings.

Q. What value did you place upon the buildings for 1912?

A. $25,000, making a total of $465,000.

Q. And for 1913?

A. The same.

Q. For 1914?

A. Yes, sir.

Q. And 1915?

A. The same.

Q. The sums which you have just given me for that lot and block, wholly unimproved, are those the sums for which in your judgment it would have sold during those years?

A. Yes, sir.

30377 Q. Under ordinary circumstances?

A. Under ordinary circumstances.

Q. Was it the full value of the land in your opinion, without improvements?

A. In my judgment; yes, sir.

Q. In your judgment?

A. Yes.

Q. Then the sums that you have given, taking into consideration the land with the improvements thereon, were those the sums for which that property would have sold improved during those times?

A. Yes, sir.

Q. Was it the full value of the property with im-

30378 provements?

A. The full value.

Q. Block 690, Lot 12, did you visit that in 1912?

A. Yes, sir.

Q. 1913, 1914 and 1915?

A. Yes, sir.

Q. Oh, you visited it in 1911 for the 1912 taxes?

A. No, 1912, 1913, 1914 and 1915.

Q. You visited it in 1911, though, for the 1912 taxes—the year before?

A. Yes, sir.

Q. Can you give me the dimensions of the lot as you found it?

A. (Examining book.) 98 feet 7 1/2 inches, 349 feet 1 3/4 inches, and irregular.

Q. 98 feet 7 1/2 inches on the Marginal street?

A. Yes, and they used to call it Exterior street in my time then Eleventh Avenue. Now it is Eleventh Avenue

Q. On Tenth Avenue what did you say it was, about 184 feet?

A. About 184 feet.

Q. Then how does it run there on West 18th 30380
Street—fronting on West 18th Street, 474 feet 1 3/4 inches?

A. I got it on 18th Street 349 feet 1 3/4 inches. I will take the map to verify that.

Q. Yes, I guess you better; there is a little variance there.

A. Yes, that is right.

Q. 474 feet 1 3/4 inches on West 18th Street?

A. Yes, on West 18th Street.

Q. And out of it are carved a whole row of lots here on 19th Street?

A. On the 19th Street side.

Q. Yes; Lot 53 and so on? 30381

A. 38 and so on to 53.

Q. What value did you place upon that lot and block for the 1912 taxes?

A. $310,000 unimproved.

Q. And for 1913 taxes?

A. The same.

Q. 1914 taxes?

A. The same.

Q. 1915 taxes?

A. The same amount.

Q. Did you find some improvements upon it? What improvements did you find upon it, if any?

A. Block 690, Lot 12?

Q. Yes.

A. Yes, sir; there were some buildings.

The Master: What was it?

The Master: There were some buildings and some tanks.

Q. Did you value the buildings separately from the tanks?

A. There were two gasometers and a boilerhouse
30383 and some small brick sheds.

Q. How did you value the buildings, separately from the tanks?

A. Separately from the tanks and then—

Q. Separately from the contents?

A. Separate from the contents.

Q. Give me just the value of the building, will you, on that lot?

A. About at that time, if my memory serves me, $5,000.

Q. For each of the years?

A. For each of the years.

Q. And the sums which you have given for that
30384 lot unimproved for those years—

A. $65,000 for the equipment.

Mr. Vilas: I move that that be stricken out, that statement.

The Master: Motion granted.

Q. The sums which you gave for that lot, wholly unimproved, are those the sums for which it would have sold in your judgment wholly unimproved under ordinary circumstances?

A. Yes, sir.

Q. Was it the full value?

A. The full value.

Q. And the sums which you gave to that lot with the buildings thereon, excluding the other improvements, were those the sums it would have sold for under ordinary circumstances with those improvements?

A. Yes, sir.

Q. And the full value of the property with those improvements on it?

A. With those improvements; yes, sir.

Q. In addition to that you valued the other improvements on the property?

A. Yes, sir. 30386

Q. Are you able to state what was the value of those improvements?

Mr. Vilas: I object.

The Master: Objection sustained.

Mr. Chambers. Exception.

Q. Will you give the assessed value of that property with all the improvements thereon?

Mr. Vilas: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Were there any improvements on there in 1915?

A. They were completely taken off. It was entirely vacant and I assessed it as vacant. 30387

Q. In 1915?

A. Yes, sir; $310,000.

Q. In 1914 the improvements were upon it?

A. They were on.

Q. Now Block 715, Lot 51.

A. Yes, ir.

Q. You visited that lot, did you?

A. Block 715, Lot 51; yes, sir.

Q. That is a lot 25x92 feet?

A. By 92.

Q. 25 feet on West 18th Street?

A. Yes, sir.

Q. What valuation did you place upon that for the 1912 taxes?

The Master: Unimproved.

Mr. Chambers: Wholly unimproved.

A. $10,000.

Q. And the 1913 taxes?

A. $10,000.

Q. The 1914 taxes?

A. The same.

30389 Q. The 1915 taxes, the same; that is wholly unimproved?

A. That is wholly a vacant lot.

Q. Is that the sum for which that would sell in your judgment under ordinary circumstances?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. Was it the full value of the property unimproved?

A. Yes, sir.

Q. Were there any improvements on that lot?

A. No, entirely vacant.

30390 Q. Block 715, Lot 59, for 1912 taxes, wholly unimproved; what value did you place upon that?

A. Block 715, Lot 59, $88,000—wait a moment, Mr. Chambers, there is a difference on that. For the year 1912 $80,000, wholly unimproved.

Q. For the year 1912 $80,000?

A. Wholly unimproved.

Q. And the year 1913?

A. $88,000.

Q. And for 1914?

A. $88,000.

Q. And for the 1915 taxes?

A. $88,000.

30391

Q. The sums that you have just given me, are those the sums for which that property would sell under ordinary circumstances?

A. Yes, sir.

Q. As of those dates, wholly unimproved?

A. Yes, sir.

Q. Was it the full value of the property?

A. It was.

Q. Did you find some improvements on that property?

A. Yes, sir. It was an old, deserted, covered gas works, two stories high.

30392

The Master: What was it?

Mr. Chambers: An old, deserted gas works, he said.

The Witness: An old, deserted, covered gas works.

Q. What did you value, just the building?

A. Just the building.

Q. What value did you place upon the building for the 1912 taxes?

A. $20,000 for the buildings.

Q. Without contents?

A. Without contents. It had no contents, simply the walls; a very old and dilapidated building.

30393

Q. No contents, just the walls?

A. Just the walls.

Q. And for the 1913 taxes, for the building?

A. $18,000.

Q. And for the 1914 taxes?

A. The same.

Q. And for the 1915 taxes?

A. The same.

Q. Is that the sum for which that property would sell with that improvement on under ordinary circumstances in those years?

A. Yes, sir.

Q. Was it the full value of the property?

A. It was the full value.

Q. You say you looked it over and there wasn't anything going on then?

A. No.

Q. It was a has-been plant?

A. An old building. They had the building but not using it at all.

Q. It was out of use?

The Master: He said it was a deserted plant.

Q. Now, Block 716, Lot 14—what was the size of
30395 that lot, Mr. Cronin, as you found it in 1914?

A. I would like to make a correction on that Block 715, Lot 59, for those other two years, 1914 and 1915. It was $106,000 in 1914, that stands, but 1915 it was $97,000.

By Mr. Vilas:

Q. The total?

A. Yes.

By Mr. Chambers:

Q. The total with the improvements on it?

A. Yes, sir; reduced by the Commissioners.

The Master: What did you value it at?

The Witness: $106,000.

30396 The Master: Your valuation was the same.

The Master: That is what we are trying to get, your value.

Q. Take this Block 716, Lot 14?

A. Yes, sir.

Q. That is 92 by 75, is it, 75 feet on West 18th Street?

A. 75 by 92.

Q. The 75 feet being on West 18th Street?

A. Yes, sir.

Q. You visited that, did you?

A. Yes, sir.

30397

Q. Did you value that for 1912 and 1913, or just 1914?

A. I had that district for 1912 and 1913, 1914 and 1915.

Q. Give it to me for 1912 improved?

A. $33,000.

Q. $33,000 for 1912, unimproved?

A. Yes, sir.

Q. And 1913?

A. The same.

Q. And 1914?

A. The same.

30398

Q. Are those the sums for which that lot would have sold in your judgment wholly unimproved?

A. Yes, sir.

Q. On those dates?

A. Yes, sir.

Q. Was it the full value of the property in your judgment?

A. Yes, sir.

Q. Were there any improvements on that lot in those three years?

A. Yes, sir; there was a two-story stable on Block 716, Lot 14.

30399

Q. What valuation did you place on the stable in 1912?

A. $3,000.

Q. And in 1913?

A. $4,000.

Q. In 1914?

A. $4,000.

Q. Was that the full value of the building, in your judgment?

A. Yes, sir.

Q. And that added to the value of the land which you have given is the sum at which it would sell

under ordinary circumstances with the improvements thereon?

A. Yes, sir.

Q. Was it the full value of the property with the improvements on it?

A. It was in my judgment.

Q. As of those dates?

A. Yes, sir.

Q. Now, Block 1457, Lot 6, for 1911?

A. Yes, sir.

Q. On 62nd Street what dimensions?

A. On 62nd Street, 266.7 feet.

30401 Q. On East 63rd Street?

A. 216.6 feet, running through the block 200 feet 10 inches.

The Master: On either end?

The Witness: On one side.

Q. On the First Avenue end there was a parcel there 50 feet 1 inch by 100 feet 5 inches?

A. Yes, sir: it makes an irregular plot.

Q. What valuation did you place upon that plot for 1911 wholly unimproved?

A. $125,000.

Q. Can you give me the units so I can cut off this little piece of property here 50 feet 1 inch by 100

30402 feet 5 inches?

A. The unit was $240 a front foot, and plottage.

Q. That would make how much for that little parcel 50 feet 1 inch by 100 feet 5 inches?

A. That would be two lots, $6,000 a lot.

Q. $12,000?

A. Yes, sir.

Q. Anything for plottage on that?

A. Yes, on 50 feet I would allow plottage.

Q. How much?

A. Ten per cent.

 30403

Q. That would be $12,000 plus ten per cent added for that little parcel?

A. Yes, sir.

Q. $13,200?

A. Yes, sir.

Q. That is deducting that, the sum which you have given for the rest of that would be the sum for which it would sell under ordinary circumstances?

Mr. Vilas: Objected to on the grounds previously stated.

The Master: Objection overruled.

Mr. Vilas: Exception.

30404

A. Yes, sir.

Q. That was for the 1911 tax?

A. 1911 tax.

Q. Did you assess that in any other years?

A. No, I only had that district for one year, for 1911.

Q. Were there any improvements on it?

A. There was a gasometer.

Q. Is that all that was on it?

A. No buildings, just a gasometer.

Q. You valued the gasometer for that year, did you?

A. Yes, sir.

30405

Q. Are you able to say what was the value of the gasometer?

Mr. Vilas: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. What valuation did you place upon that lot with the improvements thereon for that year?

Mr. Vilas: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you have any other parcels?

A. According to my slip that is all I had.

Mr. Chambers: That is all.

CROSS-EXAMINATION BY MR. VILAS:

Q. With reference to Block 689, the first one you testified about, you testified that you valued a number of buildings upon that block without machinery?

A. Yes, sir.

Q. Are you able to say whether or not those buildings did contain machinery?

A. No machinery, just buildings.

30407 Q. Do you now state positively that there was no machinery in the buildings, or that you did not value any?

A. I did not value any machinery.

Q. You did not place any value on anything but the buildings themselves?

A. Only the buildings.

Q. Those buildings, would your notes indicate the use they were put to?

A. Buildings used by the Gas Company, but they were commencing to abandon them.

Q. They were in use during the years 1911 and 1912 that you were there, were they not?

30408 A. Yes, sir.

Q. Did you place a value upon them with the use of a unit or factor applied to the area of the building?

A. I have that all figured out, the two stories and the one story, and the size. The total number of square feet is 56,620 in all of them.

Q. You applied a factor to that to produce the value?

A. Yes, sir.

Q. Was that factor something that in your judgment would be the cost to reproduce the buildings at that time?

30409

A. That was my judgment of the value at that time.

Q. Was it your judgment of the cost of reproducing them at that time?

A. Yes, on account of their condition.

Q. You took into account their age and condition?

A. Yes, sir.

Q. These buildings were also used in 1913 and 1914, when you inspected them, were they not?

A. Yes, sir, 1913, 1914 and 1915, the buildings were there.

30410

Q. And in use by the Gas Company?

A. Yes, sir.

Q. Now Block 715, Lot 59. What do you say you found there in the way of improvements?

A. There was an old dilapidated building, not in use.

Q. Do you say that building was not in use at any time during the four years that you testified about?

A. It was abandoned in my time; they were not using it for anything.

Q. Do you know what was in the building?

A. I was inside of it, just the walls, a dilapidated old structure.

30411

Q. Just an empty building?

A. An empty building.

Q. No machinery in it?

A. No machinery in it. If there had been they had taken it out before my time.

Q. Is it not a fact that there were two gas storage holders in that building?

A. There was?

Q. Isn't that so?

A. It was an old covered gas works two stories high, and in my time they were not using it for anything.

Q. It did not contain two gas holders at that time?

A. I have here on my memorandum, old gas works abandoned in 1906.

Q. Is it not a fact—I am just asking you to answer this either from any memorandum you have or from your own recollection—is it not a fact that the buildings on those premises during the years 1912, 1913 and 1914, and up to January, 1915, were actually used by the Gas Company for gas storage holder purposes?

A. For gas storage holder purposes?

30413 Q. Yes.

A. No, not in my time they were not.

Q. Do you have now any recollection of those premises aside from your notes? Do you remember them?

A. Yes, I remember the building very well.

Q. And you say it was not in use?

A. Not in use.

Q. If it should appear from the testimony in this case that it was used to the first of January, 1915, for gas storage holders would you be disposed to change your recollection on that point?

Mr. O'Brien: I object to that, your Honor.

30414 The Master: Objection sustained.

Q. Do you find anything in your field books, now that I call your attention to it, that alters your recollection of that?

A. No, it does not alter it. Anything that was there, was abandoned; they were not using it for anything.

Q. Do you rely on your memory for that or your field book?

A. On my memory and field book.

Mr. Vilas: That is all.

(Witness excused.)

FRANK J. BELL, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. What position do you hold in the Tax Department?

A. Chief Deputy Tax Commissioner.

Q. How long have you held that position?

A. Thirty-four years.

Q. Continuously?

A. Yes, sir.

Q. And when you were appointed did you try a civil service examination? 30416

A. There was no civil service then.

Q. You came into the department before civil service examinations were in vogue?

A. Yes, sir.

Q. You are now in the competitive schedule of the civil service, are you?

A. Yes, sir.

Q. You were put in by operation of law I take it?

A. I think so.

Q. Did you take an oath of office when you were appointed?

A. I certainly did, yes, sir. 30417

Q. And during your long service as deputy tax commissioner, how long have you been chief?

A. All the time.

Q. From away back in the beginning?

A. Yes, sir.

Q. And these deputies are in your department?

A. Yes, sir.

Q. And under your supervision and direction largely?

A. They all report to me.

Q. Report to you?

A. Yes, sir.

Q. And they go out in the field and make the assessments?

A. Yes, sir.

Q. What technical training did you have? You are a mechanical engineer, are you?

A. I was a mechanical engineer eight years in the Morgan Iron Works; one year in Pusey Jones & Company, Wilmington; five years as superintendent of the Kensington Iron Works, Philadelphia.

30419 Q. Did you go out and make any of these assessments yourself during any of these years?

A. Oh, yes, for corporations only. For about ten years I made the assessments on real estate of corporations.

Q. And you valued machinery of different kinds, did you?

A. Elevated railroads, gas companies.

Q. Boilers and engines and gas making apparatus?

A. Yes, sir.

Q. You studied up the values of gas making apparatus at that time, did you?

30420 A. I did.

Q. Gasometers?

A. Yes, sir.

Q. And you knew the values, did you of gasometers and engines and the like?

A. I did at that time, yes, sir.

Q. Some of these deputy tax commissioners that were in the department from 1906 to 1919 are dead, aren't they, Mr. Bell?

A. Yes, sir.

Q. Now, Walter A. Murray, do you remember him?

A. Very well.

Q. Is he dead?

A. Yes, sir.

Q. Do you remember when he died, about 1916, was it?

The Master: That is enough. Mr. Bell says he is dead. What is the difference?

A. I cannot remember the time, but I should say it was three or four years ago.

Q. He was a deputy tax commissioner?

A. Yes, sir.

Q. Was he at the time he died?

A. No, sir; he resigned at least two years before he died. 30422

Q. Do you remember between what dates he was a deputy tax commissioner?

A. No, I can't remember that. He was my clerk for many years, my personal clerk, then made a deputy, and finally resigned, a very sick man at the time he resigned, and died a couple of years afterwards.

Q. E. P. Carroll?

A. Yes.

Q. He is dead?

A. Yes, sir.

Q. Was he a deputy tax commissioner?

A. He was. 30423

Q. What was his first name?

A. Edward P.

Q. And was he in the department for some length of time before he died?

A. He was in the department two years before I was.

Q. And he died while still in office?

A. Yes, sir.

Q. Do you remember when he died?

A. I have got a memorandum here.

The Master: That is not important. Don't waste time on it.

The Witness: He was drowned at the Bahama Islands on his vacation.

Q. And he assessed property on his tax district while a deputy?

A. Yes.

Q. Edward Gilon, was he a deputy tax commissioner?

A. He was.

Q. Is he dead?

30425 A. Yes.

Q. He died while in office?

A. Yes.

Q. Was he in the department for some time before he died?

A. Only a few years. He was originally the clerk of arrears.

Q. Daniel Englehart.

A. Yes.

Q. Is he dead?

A. Yes.

Q. He was a deputy tax commissioner?

A. He was.

30426 Q. And was there for some time, was he?

A. Yes, he was there a number of years.

Q. Bryan O'Hara, was he a deputy tax commissioner?

A. He was.

Q. And he is now dead?

A. Yes, sir.

Q. And how long was he in the department, some length of time?

A. Yes, he was with us eight or ten years, I guess.

Q. And he made assessments on certain pieces of property while a deputy?

A. Yes, he was a very good deputy.

Q. Edward Francis Murray?
A. Edward Francis Murray.
Q. He was a deputy tax commissioner?
A. Yes, sir.
Q. And he is dead?
A. Yes, sir.
Q. And he was a deputy for some time, was he?
A. A few years.
Q. And assessed various pieces of property while he was holding the office of deputy tax commissioner?
A. Yes.
Q. Thomas Francis Dougherty, he was a deputy 30428
tax commissioner?
A. Yes.
Q. And he is dead?
A. Yes.
Q. And he assessed property while he was a deputy tax commissioner?
A. He did, yes.
Q. Edward Cringle, he is dead?
A. Yes, sir.
Q. And he was a deputy tax commissioner?
A. Yes, sir.
Q. And had been for some time before he died?
A. Yes, sir. 30429
Q. Now, all these men you have testified are dead, did they report to you from time to time the assessments that they made?
A. They did. You have not named all of them.
Q. Edward F. Condon, was he one?
A. Yes, sir.
Q. And is he dead?
A. Yes, sir.
Q. And he was a deputy tax commissioner?
A. Yes, sir.

Q. And had been for some time?

A. Yes.

Q. Any others, Mr. Bell, that I have not named?

A. Yes, sir, Joseph D. Cremen.

Q. He was a deputy tax commissioner?

A. Yes, sir.

Q. And he had been for some time before he died?

A. Yes, sir.

Q. And he is now dead?

A. Yes, sir.

Q. Anybody else?

30431 A. Yes, sir, John H. Conway.

Q. He was a deputy tax commissioner?

A. He was.

Q. And he assessed various pieces of property while he was deputy?

A. He did, in the department a long time, died in 1919.

Q. He is dead now?

A. Yes, sir.

Q. Anybody else I did not name?

A. I do not recall anybody else.

Q. Now, all these deputy tax commissioners who are dead, whose names you have given, when they

30432 made their assessments they reported to you, did they?

A. Yes, they did.

Q. The assessments they made in these various districts?

A. Yes.

Q. Mr. Bell, take Mr. O'Hara, Block 1642, Lots 32 and 33, for 1906; will you be able to identify the assessment he made on that block in that year, those two lots in that block that year?

Mr. Ransom: Objected to, immaterial and incompetent, not a proper way of proving it.

30433

The Master: What is the theory of this proof?

Mr. Chambers: Official acts; he is dead.

Mr. Ransom: The same theory I suppose they are trying to prove what these men did as probative against this complainant. I do not believe they are in any sense competent against the defendant anyway, but even aside from that general question, which I have urged upon your Honor before, the—

The Master (interrupting): As I understand it, each one of these deputies each year made an oath containing practically all of the information that has been asked from these men.

30434

Mr. Chambers: Just the same.

The Master: Is that correct?

Mr. Chambers: Yes.

The Master: Now, what you are really asking Mr. Bell is whether he can identify the signature of each man. Is that the idea?

Mr. Chambers: If he went out and assessed it and reported to him and then signed this certificate.

The Master: I won't take all of that. You can ask Mr. Bell to identify the signature on the oath in any one book, and bring up the question in that way.

30435

Mr. Chambers: Then I better ask one or two more questions.

Q. When these assessors assessed a property, they finally, did they not, signed their name to a book and took an oath?

A. Yes, sir.

Q. And that is found in what book?

A. In each book.

Q. Now, take this book here for illustration, being the annual records of the assessed valuation of

real estate in the Borough of Manhattan, City of New York, Section 6, Vol. 1, Blocks 1593 to 1653, maps dated 1906. Over on the last page of that book we find whose signature?

A. Bryan O'Hara.

Q. What does that indicate?

Mr. Ransom: I object to it; it speaks for itself.

The Master: I think it speaks for itself.

Mr. Chambers: Well, O'Hara made these assessments.

30437 The Master: Who is the notary who signed them?

Mr. Chambers: A justice of the Supreme Court.

The Witness: Victor J. Dowling, Justice of the Supreme Court. I saw the Judge administer the oath.

The Master: Yes.

The Witness: I did not see him sign it, but I recognize the signature.

Q. And you heard Judge Dowling, who was a Justice of the Supreme Court, administer the oath to O'Hara?

30438 A. Yes, sir.

Q. And that is O'Hara's signature, is it?

A. Yes. That is something I have done each year, I have taken the Judge and introduced him to the deputy.

The Master: What is your offer?

Mr. Chambers: My offer is that Block 1642, Lots 32 and 33 for the year 1906 as assessed by O'Hara be admitted in evidence.

The Master: Improved or unimproved?

Mr. Chambers: Unimproved.

30439

The Master: I will let you read into the record the oath of Mr. O'Hara. I will receive that as an exhibit, that is the quickest way.

Mr. Chambers: Without marking it, it is an official record.

The Master: Yes.

Mr. Ransom: You mean the oath?

The Master: Yes. I will then let you read in evidence over Mr. Ransom's objection, if he has any, the statement sworn to by Mr. O'Hara in the course of his official duties, namely, giving each lot and block and section and value which he swore to was the value unimproved.

30440

Mr. Ransom: I object to that on the ground it is incompetent, immaterial and irrelevant, particularly that this oath was not administered in any judicial proceeding, that the assessment of valuation which represented Mr. O'Hara's opinion is in no way either binding or probative against this complainant in this proceeding, because Mr. O'Hara was never cross-examined in a judicial proceeding in behalf of the complainant with respect to that opinion held by him at that time, and there is no opportunity now for eliciting from Mr. O'Hara the bases of such valuations or his qualifications. Your Honor has

30441

indicated various opinions in the course of this trial with respect to the qualification of the different men who have been introduced here from this Tax Department of the defendant public authorities. So far as O'Hara is concerned we have no opportunity to judge of his qualifications, to judge of the bases of the opinion which is embodied in this record, or the units or anything else, and I submit that it is incompetent.

The Master: Overruled.

30442

Mr. Ransom: You are referring now only to the unimproved, I take it?

The Master: Yes.

Mr. Ransom: Exception.

The Master: Read in, Mr. Chambers, Mr. O'Hara's statement as to the unimproved value under the oath.

Mr. Ransom: You might save time if Mr. Bell who is familiar with that looked those things over and located them.

The Master: Oh, they will find them quick enough. Anybody can find them quick enough.

30443

Mr. Chambers: Now, Block 1742 owner or occupant Consolidated Gas Company, 50 feet 5 inches by 100 feet 11 inches, 50 feet 5 inches by 100 feet 11 inches.

The Master: That is the building?

Mr. Chambers: Three and two stories, in that column, the next column houses on lot, and it says, one, and the next column street number, 175 and 177, Ward Lot or Map number 32, value of real estate unimproved, $16,000, value of real estate with improvements thereon—

Mr. Ransom: I object to the reading of improvements.

30444

The Master: I won't allow a statement of the value with improvements thereon without proof that that was limited to the buildings, or that O'Hara had some special qualifications other than the other deputy tax commissioners have shown for valuing improvements.

Mr. Chambers: Lot 32, Consolidated Gas Company owner or occupant, size of lot 25 feet 2 3/4 inches by 100 feet, size of house covered, stories high, three and two, houses on lot, one, street number, 2084, Ward Lot or Map No. 33, value of real estate unimproved, $33,000, value of real estate with improvements thereon—

Mr. Ransom: I object to reading that.

The Master: I said I should only permit you to read the unimproved, Mr. Chambers. §30445

Mr. Chambers: Exception. That seems to be covered, though, through the whole.

The Master: Well, if there are no improvements, that covers it.

Mr. Chambers: I mean it says the building covers the whole lot.

The Master: I won't permit that, I won't assume he did not figure in machinery. There is no way of telling, Mr. Bell, from the total value given for improvements, whether the deputy figured the value of apparatus, machinery and gasometers and other things of that sort, is there? §30446

The Witness: No.

The Master: It includes whatever he found on the property.

The Witness: Yes.

Q. Can you tell me in more detail the procedure after the assessment is made by a deputy? What does he do?

Mr. Ransom: Objected to as incompetent.

The Master: I will sustain that objection. All that I will take is the fact that these various deputies made an oath in accordance with the statutory obligation that in their opinion this property was worth a certain sum as of a certain tax date if sold under ordinary circumstances. §30447

Q. Did Mr. O'Hara make a return to you? Did he make some return to you?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception. I think it is important to show.

30448

The Master: No. The deputy tax commissioner, O'Hara, in the performance of his duty took an oath before Judge Dowling that he had appraised this property in accordance with the law and that its unimproved value in his judgment, and its full value if sold under ordinary circumstances at that time was so much money. That I am permitting you to show.

Mr. Chambers: I now offer in evidence the death certificate of Mr. O'Hara, Bryan O'Hara.

Mr. Ransom: I will admit that Mr. O'Hara is dead. There is no need of offering it.

30449

The Master: You are not going to contest Mr. Bell's statement that any of these deputy tax commissioners is dead?

Mr. Ransom: No, I will admit that any man Mr. Bell states is dead is dead.

The Master: Are you going through this performance as to every one, every block and lot?

Mr. Chambers: Yes.

The Master: You will want Mr. Bell to identify all these signatures?

Mr. Chambers: Yes.

The Master: Suppose you let Mr. Bell get the books up here and identify all these signatures

30450

and identify them tonight and you can read the memoranda in tomorrow morning, or have you a statement prepared? I take it that you have a statement, haven't you, showing what these books show?

Mr. Ransom: I will make a further admission which may save a little time, and that is with respect to each of these men whom Mr. Bell says are dead—that they are dead, that at various times between 1906 and the present time these men during their lifetime did place values

30451

unimproved upon real property, as shown by the tax records produced in court, and that after they had placed such values they went before a Justice of the Supreme Court and took an oath in the form which already appears upon the record; that their signatures appear to such oaths in each instance.

The Master: And it is the genuine signature of the deputy.

Mr. Ransom: And it is the genuine signature of those deputies now deceased. Of course we do not concede that the value which they placed was the correct value.

30452

The Master: You concede practically every fact that Mr. Chambers could prove by Mr. Bell or read under my rulings from these records. That is what you are doing?

Mr. Ransom: Except the values.

The Master: No, but you are conceding that the man placed that value on it.

Mr. Ransom: Placed that value on it, yes.

Mr. Chambers: After he visited the property and examined it.

Mr. Ransom: Where he made oath that he visited the property.

30453

The Master: Whatever his oath covered, that was his statutory duty, and you admit that he performed his duty. I think with that admission you will not need Mr. Bell any more. Between now and the close of the testimony for the defendants I shall ask you to make up a tabulation from these records showing the book, block, and lot number, and the name of the deputy. Prepare that before you are finished with your case. You can give it to Judge Ransom as soon as it is completed and he may check it up, and that can be taken in as the statement that those books contain those items.

Mr. Chambers: Then it is conceded that those books from which these items are taken are in evidence?

The Master: No, I will let you read in evidence from the books as much as you want to read in from these here.

Mr. Chambers: It is stipulated that that statement in tabulated form is just the same as if I read from these books.

The Master: Yes.

Mr. Ransom: I might just want to ask Mr.

30455 Bell one or two questions.

By Mr. O'Brien:

Q. Mr. Bell, you have heard the testimony of practically all the deputies who have been on the stand here?

A. Half of them, probably.

Q. And you have been over the records concerning which they testified—that is the assessments?

A. Some of them.

Q. Before assessments are made they are all submitted to you and they pass through your hands, and you are present when they swear to them in court each year?

30456 Mr. Ransom: I object to that on several grounds.

The Master: I will not allow that because it is already covered.

Q. You can, taking the assessments made upon the property of the complainant company for each of the years and each of the lots and blocks, give us the official assessment of the Tax Department on those blocks for land plus improvements, can you?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. O'Brien: Your Honor, this goes to the question of the improvements particularly which you have ruled out.

The Master: Yes, and I sustain the objection.

Mr. O'Brien: I wanted to have the record show that the assessments are made and become the official act of the Tax Department of the City, both as to land and land and improvements.

The Master: I sustain the objection.

Mr. O'Brien: That these records are admissible here in this case as bearing upon the value 30458
of the land and the value of the improvements.

The Master: I have sustained the objection on all of the theories that you have suggested.

Mr. O'Brien: This testimony, further supplemented by the testimony as to what was the action taken by the complainant company after the assessments were made, will be further admissible, because—

The Master: You can show anything that the gas company has done that would be an admission against interest now. I am not going to take this proof that you now offer.

Mr. O'Brien: Will your Honor allow us to 30459
just make the record and make that offer as to certain parcels?

The Master: You have made your record. What do you mean, you want to offer one of these books?

Mr. O'Brien: I mean the assessments made as to improvements.

The Master: Ask Mr. Bell.

By the Master:

Q. What Mr. Chambers has offered to read, Mr. Bell, this that Mr. O'Brien has in his hand, is an official record?

30460 Frank J. Bell, Direct.

A. Certainly.

Q. It shows the appraisals officially made, the assessment, the value officially placed this property which we have just referred to, with the improvements on it?

A. It does.

Q. For the basis of taxation? That is the value as finally fixed by the Board of Tax Commissioners?

A. Yes.

Q. That includes all improvements, machinery, fixtures, gasometers and everything else?

30461 A. It does.

Q. In every instance?

A. Yes, sir.

Q. And it is impossible for us to differentiate between the value placed upon buildings by the deputies and the value on buildings and contents by the deputies; is that correct?

A. That is correct.

The Master: You offer now, Mr. O'Brien, to read the improvements on the lots to which we have just referred?

Mr. O'Brien: Yes.

The Master: I say I won't let you read it and give you an exception. There is no evidence before me that any deputy was qualified to value personal property, being fixtures attached to the land, or gasometers or anything else.

30462

Mr. O'Brien: Your Honor, I am falling back upon the proposition that this was an official act of the department, the Tax Department, chargeable under the charter with the duty of assessing property each year in question and assessing each one of these lots and blocks, and improvements where there were improvements—that that was the official act of the department.

In that connection in order to get a concrete instance on the record for the ruling of the Court I ask.

Q. Mr. Bell, in connection with this property of the Consolidated Gas Company, Lot 33 in Block 1642, what was the assessment of that property by the Tax Department of the City in this year 1906, unimproved?

The Master: We have got that; I will not allow it.

Mr. O'Brien: $33,000 you have already testified.

The Master: No, he has not anything of the sort. He has not testified to that at all. Ask your next question. 30464

Q. What was the assessment of the Tax Department of the City of New York for that year 1906, same lot and same block number, with improvements?

Mr. Ransom: Objected to on the grounds previously stated.

The Master: Objection sustained.

Mr. O'Brien: In this connection I propose, your Honor, to take every lot and every block whereon the property of the complainant company, used and useful in the gas business, has been assessed by the City of New York and offer in evidence here the official assessments made in each year from 1905 down to date, of the Tax Department; in conjunction with that to further present the testimony of the witness as to whether these assessments, after they had been made officially by the Tax Department of the City, were objected to by the complainant in any instance and, if so, under what conditions. 30465

Mr. Ransom: Objected to as incompetent.

The Master: That is complete now?

Mr. O'Brien: That is my proposal as to each lot where there were improvements.

The Master: Mr. Ransom's objection is sustained; I will not permit it to be done.

Mr. O'Brien: As I understand it, your Honor rules that the deputies who made originally the assessments, and reported them to the Tax Department and swore to them, have not been proven to be experts?

The Master: As to machinery.

Mr. O'Brien: As to machinery and equipment?

The Master: As to machinery and equipment
30467 I won't take their testimony, because up to this point no testimony has been offered that any deputy tax commissioner has ever been required to qualify in ability to value machinery and equipment. They valued the item of machinery and equipment as best they could, from such information as they could get.

Mr. O'Brien: I take exception to your Honor's ruling and I would like to submit some information to you on that later.

The Master: All right; go on with Mr. Bell.

Q. In that connection, Mr. Bell, let me ask you whether the practice has obtained in the Tax Department of the City of New York for many years, go-
30468 ing back to and prior to 1915, of getting from the State Tax Department each year the return made to the State Tax Department by the complainant company of its taxable properties, of its land and improvements?

Mr. Ransom: Objected to as incompetent, not binding on the complainant.

The Master: Objection sustained. I do not care where you get it, if you have any statement of the Consolidated Gas Company as to its value of property, which is a statement against interest, I will take that.

Mr. O'Brien: I note an exception.

Q. I ask you, Mr. Bell, if it is not a fact that each year you have secured from the State Tax Department the original of a statement filed by the complainant company with the State Tax Department, and whether or not in each instance as to every lot and block owned by the complainant company, upon which there have been improvements and machinery and equipment, you have not turned over that original return to each of the deputies on the districts wherein that property was located, for their information, to be used in connection with their judgment after they have 30470 viewed the property, as to the value of the same?

Mr. Ransom: Objected to as incompetent, not binding on the complainant.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. And that practice has extended down to the present time?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Since what year, Mr. Bell, has the Tax Department turned over to the deputies who were called upon to assess the improvements and the plant and machinery of the complainant company the so-called 30471 Form "S" of the return made as to said property of the complainant company?

Mr. Ransom: Objected to on the previous grounds.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Mr. Bell, you yourself were connected with the —was it the Jackson Iron?

The Master: He has stated what experience he had. What is the next question? Mr. Bell himself is qualified probably to appraise the property, if he looked at it himself.

Mr. Ransom: We do not admit that, as much respect as I have for Mr. Bell.

The Master: I say he probably would be.

Mr. Ransom: I doubt it—much respect as I have for him.

The Master: The fact is that he did not go out and appraise any of that property. Did you?

The Witness: No.

Q. Mr. Bell, you will when you are next called to the stand produce at our request the papers filed by the complainant company, wherein they have objected
30473 to the assessments on improvements and upon land concerning which testimony has been given in this case?

The Master: You will produce whatever you are subpoenaed to produce and ordered to produce, won't you, Mr. Bell?

The Witness: Why, certainly.

The Master: Give Mr. Bell a direction of what you want and he will bring it.

Mr. O'Brien: I will give him a statement of that.

Mr. Ransom: I would like to ask him one question.

30474 Cross-examination by Mr. Ransom:

Q. Referring to these assessments that have just been read with respect to the value of real estate improved on Lots 32 and 33—

The Master: Unimproved.

Q. (Continuing.) Lots 32 and 33 unimproved, of Block 1642, can you give the units which Mr. O'Hara used?

A. No, sir.

Q. You could not in any of these cases as to the dead deputies?

A. I could with my office data here; I could not from memory.

Q. You could not from your knowledge?

A. No, sir.

Q. You could not from your knowledge in any way?

A. Not unless it was refreshed by office data.

The Master: You might have some office data that would give it?

The Witness: Sure, I have, but not on Brian O'Hara's; we did not have factors in that day.

Mr. Ransom: That is all. 03476

RE-DIRECT EXAMINATION BY MR. O'BRIEN:

Q. Mr. Bell, in that respect, will you state the practice of the Department in regard to the factors and what the policy of the Department is with respect to the same, and the use made of them by the deputy tax commissioners?

Mr. Ransom: Objected to as incompetent, not binding on the complainant, not probative of any issue in this case.

The Master: Objection sustained.

Mr. O'Brien: Your Honor, you know the testimony has been given as to that use.

The Master: I will not take it; it was brought out on cross, practically. 30477

Q. I will ask you, Mr. Bell, as to the directions of the Department to the Commissioners and the practice of the Department in reference to factors that they find on buildings, and what the directions are with respect to the use of the same?

Mr. Ransom: Objected to. They cannot impeach their witnesses, and it is hearsay.

The Master: I will not allow that.

Mr. O'Brien: But, your Honor, is it not proper direct?

The Master: I do not think so.

Mr. O'Brien: It is a matter of the procedure of the city department charged with assessing.

The Master: No, I will not allow it.

Mr. O'Brien: As to just what their directions are and their method of—

The Master: The law requires it and the law states what their duty is. The law does not give the Tax Department any such function or power. It is the duty of the Deputy Tax Commissioner under the law to go out and appraise it under his conscientious judgment.

30479 Mr. O'Brien: May I not bring out from the witness under direct-examination, your Honor, just that fact—that that is their duty and that they proceed to carry it out?

The Master: No, the statute defines the duty and I will concede they carry it out, except as the particular testimony of the witnesses shows to the contrary.

Mr. O'Brien: I note an exception to your Honor's ruling, and in order to have that concretely passed upon, I will ask Mr. Bell now whether or not, in addition to the provisions of law covering the work of the assessors, they

30480 are not required and directed to proceed to make their assessments irrespective of any data they receive in the Tax Department?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. O'Brien: Exception.

The Master: We are going to finish with Mr. Ramsey tonight.

Mr. O'Brien: I note an exception. It is beyond a matter of courtesy; it is a matter of taking care of the defendants' business for tomorrow and the next day and the next day.

By Mr. Chambers:

Q. Mr. Bell, you know Mr. Bayer. What was his full name?

A. Henry.

Q. He was a Deputy Tax Commissioner?

A. He is yet.

Q. And had been for some time, a number of years?

A. Yes.

The Master: He is yet, he says.

Q. Prior to 1915 he was a deputy?

A. I think so, yes. 30482

Q. And he operated in the Tax District?

A. He did, yes.

Q. And made assessments?

A. Yes, sir.

Q. Where is he now, do you know?

A. I believe he is up at Liberty, New York.

Q. And he is what—very sick?

A. He is very sick with tuberculosis.

Q. And too sick to be moved, you understand?

A. I understand so, yes.

The Master: Will you take his oath in the same form as if he had been dead?

Mr. Ransom: I will consent for the purposes of this case that the stipulation I have made with respect to the oaths of these other witnesses and their signatures shall apply to this witness, and that the same data may be read with respect to Mr. Bayer for the years when he assessed that may be read with respect to those that are dead —this over my objection, of course, as to its competency and probative force. 30483

The Master: What I want to make clear is, there is no sense dragging anybody down who is sick.

Mr. Chambers: He could not come.

Mr. Ransom: They can put it in the tabulation with the others.

The Master: There is no sense taking a deposition and having him swear to this.

Q. There is another one, Mr. P-l-a-s-t-y-e.

A. You have not spelled that right. It is P-l-a-a-t-z-e.

Q. What was his first name?

A. I don't know; it has escaped me just now.

Q. Henry, does that sound right?

30485 A. I do not recall it. No, that does not sound like it.

Q. Herman, maybe. Was he a Deputy Tax Commissioner for a number of years?

A. Mr. Plaatze was, yes.

Q. William R.?

A. That is it. I recognize it now.

Q. He was a Deputy Tax Commissioner in 1913?

A. I think he was, yes. He was for a number of years, yes.

Q. Is he now?

A. No, sir.

Q. He has left the Department?

30486 A. Yes.

Q. And did some time ago?

A. Yes.

Q. Do you know where he is at the present time, of your own knowledge?

A. No, sir.

Q. You do not know where we could find him?

A. No, sir. I made diligent inquiry about the office. Nobody seems to know where he is.

The Master: Are you willing to take him in with the same stipulation?

Mr. Ransom: No, I know too much about that man.

The Master: Would you recognize his signature?

The Witness: Oh, yes.

Mr. Chambers: He has disappeared; perhaps we ought to prove we made other efforts to find him.

The Master: Make your record.

Q. You do not know of any other place where he could be found?

A. No, sir. 30488

Q. Or any place that we could subpoena him?

A. No.

Q. And you have made some inquiries?

A. Yes, only about the office. Most every man has some friends, and I have asked a number about the office and they do not know.

Q. He was there for a number of years?

A. Oh, yes.

Q. And there is nobody in the office knows where he is?

A. No.

Q. So we could subpoena him?

A. No. 30489

Mr. O'Brien: I might ask Judge Ransom—

The Master: Ask Judge Ransom later; let us get rid of Mr. Bell. Are you through with Mr. Bell?

Mr. Chambers: Yes.

30490 Clarence J. Ramsey, Direct.

CLARENCE J. RAMSEY, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Block 1070, Lot 5, for the years 1906, 1907, 1908, 1909 and 1910. Can you give me the valuation you placed upon it?

A. I would have to have the field book, the record book.

Q. Do you want the field book?

30491 The Master: No, he wants the record book.

A. The annual assessments record is the official book.

The Master: Are you still a Deputy Tax Commissioner?

The Witness: No, sir, I have not been in ten years.

Q. You were appointed a deputy and took the oath of office?

A. I did.

Q. Before you were appointed deputy what business were you in?

A. Real estate.

30492 Q. Had you been in the real estate business a number of years?

A. Yes, sir.

Q. And you were familiar with values of real estate in the City of New York?

A. Yes, sir.

Q. Improved and unimproved?

A. Yes, sir.

Q. How long were you in the Tax Department?

A. How long altogether?

Q. Yes.

A. From the first year of Greater New York; 1898, I think it was.

Q. And that is 1898 or 1897, when Mayor Van Wyck was elected?

A. 1898 I think it was, and I left there ten years ago.

Q. You left ten years ago; so you left in 1910, then?

A. 1910, and I am still in the real estate business.

Q. Have you kept track of the values of real estate, improved and unimproved, in all these years? 30494

A. Yes, sir.

Q. Well, while you were in the department and in the real estate business?

A. Yes, sir.

Q. Have you bought and sold property in Manhattan?

A. Yes, sir.

Q. Rented property?

A. Yes, sir.

Q. And you know about mortgages on unimproved and improved real estate?

A. I endeavored to keep up all my information.

Q. What firm are you a member of? 30495

A. I am the manager of the sales department and appraisers department of Cruikshank & Company, 141 Broadway.

Q. They are in the real estate business?

A. Yes, sir, since 1894.

Q. Block 1070, Lot 5, for the years 1906, 1907, 1908, 1909 and 1910, unimproved?

A. The annual records of assessed valuation are the official books, and those books there, the field books, are only done in pencil and I cannot say or

swear, and nobody else can swear, that that is the official book and the official record, whereas this is, with a possible exception. I have known a case right in this particular section here where the assessment was even changed afterwards, the records, of the apartment on the north side of 79th Street, west of Columbus Avenue, if I remember it correctly. That assessment was a very serious matter and very much complicated—

Q. Don't, Mr. Ramsey.

A. I know, but I want to prove to you—

30497 Q. It is immaterial in this case.

A. That this record, while I recognize it as the official record, to testify that those are my figures, they might be changed.

Q. Would you not have it in pencil in the field book, in your pencil writing?

A. Possibly, yes.

Q. That is what a lot of them use.

A. But the field book is no recognized book in court.

Q. I want to know the value you placed upon that lot and block?

By the Master:

30498 Q. He wants to know whether you can tell us what in your judgment the property was worth at that time.

A. I cannot tell.

Q. Would you have any recollection at all when you look at these books that you have here?

A. I can verify it from the record.

The Master: Get 1906, for this lot.

Mr. Chambers: Lot 5, Block 1070.

The Witness: It does not appear to be here.

The Master: Then take 1907.

30499

By Mr. Chambers:

Q. Will you get 1906, Block 1070, Lot 5?

A. I have got 1909 for that particular one.

Q. Here are some books; here is 1906 (handing witness)?

A. I have it here.

Q. What value did you assess that lot at for the taxes of 1906, Block 1070, Lot 5?

By the Master:

Q. What in your judgment at that time, after you looked at the property, was its value unimproved, if sold under ordinary circumstances—Block 1070, Lot 5, in 1906?

30500

A. It appears to be as shown on the record here, the annual record of assessed valuations for the year 1906, land $58,000, total—

Q. No, listen, Mr. Ramsey. Looking at that book, does it refresh your recollection so that you can now say that you thought at that time when you looked at it the land was worth $58,000?

Mr. Chambers: Unimproved.

The Master: Unimproved.

A. It appears so, and appears on the record.

Q. Will you say so now, that that was your judgment at that time?

30501

A. I swore to that as my judgment at that time. It is in the book here.

Q. Is that your judgment now?

A. I have no reason for changing it.

Q. Was it your judgment at that time of its value?

Mr. Chambers: The sum for which it would sell, wholly unimproved?

A. I swore to it then and I do not see any reason for changing it.

By Mr. Chambers:

Q. Well, it was true at that time; that was the value or the sum for which it would sell under ordinary circumstances?

A. For that particular year?

Q. Yes, 1906.

A. Yes.

Q. 1907, did you value it the same unimproved?

A. No, sir.

By the Master:

Q. What was the value?

30503 A. The outside value unimproved $65,000.

Q. For 1907?

A. Yes.

Q. Now, 1908.

The Master: What was your value unimproved for 1908?

The Witness: $80,000.

Q. That was unimproved?

A. Yes, sir.

Q. Now, 1909?

A. $80,000.

Q. 1910?

A. $80,000.

30504 Q. Are those the sums for which in your judgment that property would have sold in those years unimproved?

A. Yes, sir.

Q. Under ordinary circumstances?

A. Yes, sir. That is the assessment of the proportionate share of the land and buildings. The total assessment—

The Master: No, answer the question.

Q. What I want to know is this, these sums you have given for that lot unimproved, are those the sums for

which it would sell under ordinary circumstances, as you made your valuations at those times?

A. Yes, sir.

Q. Were there some improvements on it?

A. There appears to have been, yes.

Q. What improvements?

A. For which years?

Q. For all the years.

A. The same thing.

Q. What improvements were there in 1910?

A. Various buildings of one story, 75 feet in width and so on. 30506

Q. At how much did you value all of them?

The Master: Was there any machinery there?

The Witness: None noted.

The Master: No apparatus?

The Witness: None noted.

Q. What value did you place on the buildings for 1910?

The Master: Let him give the total as improved.

A. The total including the land and the improvements, $90,000.

Q. Now, for 1909? 30507

A. Practically the same buildings.

The Master: What was your total value for that year?

The Witness: $90,000.

Q. Now, 1908?

A. It appears to be the same, $90,000.

Q. 1907?

A. $75,000.

The Master: Apparently the same buildings?

The Witness: Apparently the same buildings.

Q. 1906?

A. $70,000.

Q. Same buildings?

A. They appear to be the same buildings.

Q. The size of the lot, was that 200 feet on West 42nd Street by 98 feet 9 inches the other dimensions?

A. No, it appears to be 200 feet on West 41st Street.

Q. Yes, on West 41st Street. Then it was 98 feet 9 inches the other way?

A. Yes, sir.

Q. Now, the sums that you have given for that lot, the total sums with the improvements thereon,
30509 were those the sums for which it would sell under ordinary circumstances at that time?

A. Yes, sir.

Q. In your judgment?

A. Yes, sir.

Q. Now, Block 1157, Lot 1, for 1906 and 1907, unimproved?

A. $500,000.

By the Master:

Q. For what year?

A. The year 1906.

Q. What kind of improvements were on there?

A. Gas holders, engines houses, offices, etc.

30510 Q. Did you make a separate valuation of the offices as distinguished from the gas holders and engines?

A. It does not seem so on the record.

Q. You can't give it to us now?

A. No, sir.

Q. The only thing you can do is to give us the total value with all the improvements?

A. Yes, sir.

By Mr. Chambers:

Q. Can you give me your units there?

A. No, sir.

Q. How much you valued it at a lot?

A. No, sir, I am standing by the record.

Q. How about the field book?

A. No record on the field book.

Q. You might see a pencil memorandum on there?

A. That is the only book I will go by. The field book somebody might change, or otherwise.

Q. You would recognize your own handwriting?

A. I don't put down valuations all the time in the field book; my clerk does that.

Q. Now, Block 1157, Lot 1, for 1907?

A. Land $550,000. 30512

By the Master:

Q. Did it have the same improvements on it?

A. Yes, sir.

Q. Can you differentiate between what you valued the building at and what you valued the apparatus and holders at?

A. No, sir.

Q. All you can do is to give us the total?

A. Yes, sir.

Q. For everything?

A. Yes, sir.

By Mr. Chambers:

Q. Can you give me the unit for 1907? 30513

A. No, sir.

Q. Are those the sums which you have given for 1906 and 1907, are they the sums for which that property would sell under ordinary circumstances?

A. Yes, sir.

Q. Unimproved?

A. Yes, sir.

Q. It occupied the whole block, didn't it?

A. Show me the map and I will tell you. It appears here 200 x 800, which is a whole block.

Q. Now, Block 1177, Lot 1, for 1906 and 1907. Have you the dimensions there?

A. As shown on the record?

Q. Yes.

A. 200 feet 10 inches by 343 feet 9 inches, irregular.

Q. What did you assess that for unimproved in 1906?

A. $140,000.

Q. And in 1907?

A. $180,000.

30515 Q. Are those the sums for which it would sell under ordinary circumstances in your opinion and judgment on those dates?

A. I so declared in the record under oath.

Q. And you so declare now, don't you?

A. I don't see any reason to change.

Q. Were there any improvements on that?

A. Yes, sir.

Q. What improvements?

A. A two-story building.

Q. Anything else?

A. That is all.

By the Master:

30516 Q. No apparatus or holders or anything of that sort?

A. Not shown here.

By Mr. Chambers:

Q. What value did you place on those buildings for 1906?

The Master: What was your total?

A. The total was $150,000.

Q. And for 1907 what was the total?

A. $190,000.

30517

Q. Are those the sums for which that property would sell under ordinary circumstances in your opinion?

A. Yes, sir.

Q. With the improvements on in those two years?

A. Yes, sir.

Q. Block 1092, Lot 1, 1906 to 1910—what valuation did you place on that block and lot. First, for 1906, unimproved?

A. $300,000.

By the Master:

30518

Q. Any improvements on that?

A. Yes, sir.

Q. What were they?

A. Five gasometers altogether, together with buildings.

Q. Gas holders?

A. Gas holders.

Q. You can't give us separate valuations as to the gasometers and apparatus can you?

A. No, sir.

Q. All you can give is the total?

A. Yes, sir.

Q. Now, for 1907?

30519

A. $375,060.

Q. Didn't it have the same improvements on it?

A. Yes, sir.

Q. You can't tell us the value you put on the buildings as distinguished from the gasometers and other things?

A. No, sir.

Q. All you can give us is the total?

A. Yes, sir.

By Mr. Chambers:

Q. Now, take 1908.

By the Master:

Q. What was the unimproved value?

A. $450,000.

Q. The same improvements on it?

A. Yes, sir.

Q. And the same statement with reference to values given separately?

A. Yes, sir.

Q. You can only give the total amount?

A. Yes, sir.

By Mr. Chambers:

30521 Q. Now, 1909?

A. Land, $450,000.

The Master: Same improvements?

A. It appears to be the same improvements.

The Master: Same situation with reference to the value of improvements?

The Witness: Yes, sir.

Q. Now, 1910?

A. Land, $450,000.

By the Master:

Q. Same improvements?

A. Yes, sir.

Q. And the same situation with reference to values?

30522 A. Yes, sir.

Q. You cannot separate them?

A. No, sir.

By Mr. Chambers:

Q. Was it the same size all the time, that lot?

A. Show me the map and I will tell you?

Q. You don't remember Twelfth Avenue being through there then?

A. If I remember correctly the Gas Company had it fenced in.

The Master: The record shows when the change occurred, in some other form. This wit-

ness has given you the value as he found it from year to year.

Q. What dimension did you have in your book?

A. 200 feet 10 inches by 625 feet, irregular.

The Master: 1910, that was?

The Witness: Yes, sir.

The Master: You are just reading from the 1910 book?

The Witness: Yes, sir.

The Master: The change was made after you left the district in 1910?

The Witness: Yes, sir. 50324

The Master: It appears that that change was made in 1918.

Q. The sums which you have given for that lot and block for those years, 1906 to 1910, inclusive, unimproved, are those the sums for which it would sell in your judgment unimproved?

A. Yes, sir.

Q. Under ordinary circumstances?

A. Yes, sir.

Q. As of that date?

A. Yes, sir.

Q. Now, Block 1093, Lot 1, 1906 to 1910. Give me the dimensions of the lot in 1906? 30525

The Master: He is working back from 1910 now.

Q. All right, Block 1093, Lot 1, in 1910 unimproved?

A. You want the size?

Q. Yes.

A. As shown in the record here, 200 feet 10 inches by 575 feet, irregular.

Q. What valuation did you place on it in 1910, unimproved?

A. $375,000.

Q. Any improvements on it?

A. Yes, sir.

Q. What?

A. Various buildings.

The Master: Weren't there some gasometers on there?

A. It don't show here.

By the Master:

Q. Look at 1909. It says, "And gasometers," for 1909?

A. Yes.

30527 Q. Can you say that you did not value any gasometers in 1910?

A. I valued everything that was on the land.

Q. Would you say that the gasometers had been removed for 1910?

A. They might have been removed, I don't know. The word "gasometers" does not appear in this record as of 1910. It does appear in the record of 1909.

By Mr. Chambers:

Q. What is the value of the improvements? Can you look at that and see, without stating the values, if there is much difference that would lead you to believe something was taken off?

30528 A. The chances are the gasometer has been removed, for the reason that there is an apparent reduction here of $75,000 in the improvements.

Q. Now, will you state for 1910?

Mr. Vilas: I still object.

The Master You say to the best of your recollection the gasometers had been removed?

The Witness: I say as shown on the record here there is apparently some building removed, for the reason that the improvements have been reduced, the valuation of the improvements have been reduced.

30529

Q. What was the valuation of the buildings in 1910?

Mr. Vilas: I object to that.

The Master: The objection is overruled.

Mr. Vilas: The records in this case already shows by positive testimony that no such thing is the case.

Mr. Chambers: Maybe your testimony is not true.

The Master: I will take this witness's statement and consider it in the light of other evidence in the case.

30530

Mr. Vilas: Let him state what the improvements were, if he knows.

The Master: State to the best of your recollection, after refreshing it, what the improvements on there were?

The Witness: The improvements for 1910 showed four buildings.

By Mr. Vilas:

Q. Is that all it shows?

A. Yes, sir.

Q. It does not show whether they contained machinery or gas works?

A. No.

30531

Mr. Vilas: I press the objection.

The Master: Objection overruled.

Mr. Vilas: Exception.

By Mr. Chambers:

Q. State the total value?

A. $500,000.

Q. Is that the sum for which that property would sell in your judgment under ordinary circumstances unimproved and with the improvements thereon?

A. Yes, sir.

Q. As of that date?

A. Yes, sir.

Q. Now, 1909, unimproved?

A. $250,000.

Q. Is that the sum for which that property would sell in your judgment unimproved as of that date?

A. Yes, sir.

By the Master:

Q. As of that date there were buildings and gasometers?

A. Yes, sir.

30533 Q. You valued all of the improvements?

A. Yes, sir.

Q. The valuation includes everything?

A. Yes, sir.

By Mr. Chambers:

Q. You did not separate your buildings from the gasometer?

A. No, sir.

The Master: And you can't do it now?

The Witness: No, sir.

Q. Now, 1908, unimproved, what value did you place on that unimproved?

A. $375,000.

30534 Q. Is that the sum for which it would sell under ordinary circumstances, in your judgment?

A. I so declared.

Q. Was there any gasometer on it then?

A. Not as shown in the record.

Mr. Vilas: We put it on and took it off again.

The Master: It is quite apparent that the record is not right, because in 1907 you don't show gasometers.

Q. Now, 1907?

A. Land, $325,000.

Q. Is that the sum for which it would sell in your opinion unimproved as of that date?

A. Yes, sir.

Q. Now, 1906, unimproved?

A. $250,000.

Q. What kind of buildings on it or improvements?

A. There were four buildings and gasometers.

Q. Now, is that the sum for which that property would sell during those years wholly unimproved?

A. Yes, sir.

Q. Under ordinary circumstances in your opinion?

A. Yes, sir. 30536

Q. Now, Block 1107, Lots 23 and 28. Give me 1906 for Lot 28 unimproved?

A. $75,000. It is a bulkhead.

Q. Now, Lot 23?

A. $75,000.

Q. And Lot 28?

A. $75,000.

Q. Was that vacant?

A. Yes, sir.

Q. Are those the sums for which those two lots would sell in those years, in your judgment?

A. Yes, sir.

Q. Now, 1907, for the same block and lot? 30537

A. $80,000.

Q. That is for Lot 23?

A. Yes, sir.

Q. Now, Lot 28?

A. $80,000.

Q. Those were both unimproved?

A. Yes, sir.

Q. Now, for 1908, Lot 23?

A. $80,000.

Q. And for 1908, Lot 28?

A. $80,000.

30538 Clarence J. Ramsey, Direct.

Q. That is unimproved?
A. Yes, sir.
Q. Now, give me 1909?
A. Lot 23, $100,000 across.
Q. And Lot 28 for 1909?
A. $100,000 across.
Q. That is unimproved?
A. Yes, sir.
Q. Now, give me the same for 1910?
A. Lot 23, $100,000.
Q. And for 1910, Lot 28?
30539 A. $100,000.

The Master: Give us the dimensions for 1910 on Lot 23.

The Witness: As shown by the record, 200 feet 10 inches by 488 feet 6 inches irregular. That is for Lot 23. Lot 28, 200 feet 10 inches by irregular.

Q. Are the sums that you have given for 1906 to 1910 inclusive the sums for which that property would sell?
A. Yes, sir.
Q. Under ordinary circumstances if wholly unimproved?
30540 A. Yes, sir.
Q. In your opinion, as of those dates?
A. Yes, sir.
Q. Was it the full value of the property in your judgment?
A. Yes, sir.
Q. It was a bulkhead, wasn't it?
A. Yes, sir.
Q. A lot of it was land under water?
A. Yes, sir, that is my recollection.
Q. A jumping off place there?
A. You couldn't find it up there.

CROSS-EXAMINATION BY MR. VILAS:

Q. With respect to Block 1093, Lot 1, what was the valuation you gave for 1909?

A. $375,000.

Q. You found in some years gasometers there, you found mention of some gasometers in some years, and in some years gasometers were not mentioned?

The Master: Question not allowed.

Mr. Vilas: It is only preliminary.

Q. Do you have any personal recollection of that at all?

A. No.

30542

Q. Would you conclude from the state of the record that the gas meters were there during all those years?

A. I would so conclude.

Mr. Vilas: I move to strike out the valuation for 1910 of $500,000.

The Master: Motion granted.

Mr. O'Brien: Exception.

Q. With reference to the buildings you have testified to have you any personal recollection about that now?

A. I have not.

Q. You go entirely by the record? 30543

A. Yes, sir.

Q. Which you call the official record?

A. I am only testifying as shown in these books.

Q. You do not testify from memory after you have consulted these books, do you?

A. That is impossible.

Q. Do you know the number of buildings that were on these lots?

A. I have a vivid recollection of the buildings on it. I have passed there several times but I can't memorize it all.

30544 Clarence J. Ramsey, Cross.

Q. Would you say the same as to all the lots you have testified about?

A. Yes, sir.

Q. I speak particularly of Block 1070, as to which you testified as to buildings.

A. All that is shown on the record; I have no personal recollection except in a general way, as I might know the Woolworth Building.

Q. You testify not from memory but because the record shows it?

A. That is what I am doing, testifying from the
30545 record.

Mr. Vilas: I move to strike out the testimony as to buildings, on the admissions of the witness

The Master: Motion denied.

Mr. Vilas: Exception.

Adjourned to Tuesday, January 13, 1920, at 10 A. M.

Last Complainant's Exhibit 411.
Last Defendants' Exhibit AA-73.

30546

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 30547

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, January 13, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 30548
MR. O'BRIEN, of Counsel for defendant Swann.

C. M. HIGGINS, called as a witness in behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Higgins, what is your business?
A. I am in the oil business.
Q. And have you been in the oil business very long? 30549
A. Quite some time.
Q. And what company are you connected with?
A. The Standard Oil Company of New York.

Q. And what is your official position?
A. I am a director of the company.
Q. A director?
A. Yes, sir.
Q. And sales manager?
A. Yes, sir.
Q. Do you cover the sales in this territory?
A. Well, to some extent; yes, sir.
Q. How large a territory do you operate in?
A. Well, I operate all over the United States.
Q. You yourself?
30551 A. Yes, sir.
Q. Do you sell all over the United States?
A. Any place I can sell oil, sir.

The Master: Are you a director in charge of the sales, Mr. Higgins?

The Witness: Well, yes, in a certain branch of the business.

Q. Have you produced here under subpoena certain contracts?

A. As many as I could find, sir. I have complied with your request as closely as I could do so.

Q. Have you the contracts there between your company and the Kings County Lighting Company?
30552 A. Yes, sir. What contract is it you wish?

Q. Well, all of them. I am going to put them all in evidence, if you do not mind. You do not mind what I put in evidence, do you?

A. Not at all, sir (handing counsel papers).

Q. You have produced here five contracts between your company and the Kings County Lighting Company?

A. Yes, sir.

Q. They seem to run, Mr. Higgins, from September 5, 1912. The earliest one, I see on the outside, is

B0553

dated September 5, 1912, and 1914, 1916, 1917 and 1919.

A. Yes. I suppose those papers will be handed back to me when we are through.

The Master: Yes.

Mr. Chambers: Yes, after we get through with all these contracts I am going to ask that copies be substituted for them, so that the companies can have the originals back.

The Master: The company will take the originals back, that is sure. I am not going to impound their papers.

B0554

The Witness: Well, they are our property and I do not see why they should be retained by the Court.

The Court: They will not be, Mr. Higgins. If you want Mr. Higgins to have copies of these made I have no doubt he will do it and send the bill to you.

The Witness: He has copies there.

The Master: He says you have copies.

Mr. Chambers: I am not so sure that we have copies of them all.

The Master: If you want copies made, I am sure Mr. Higgins will have the copies made and charge you with the expense.

B0555

Mr. Chambers: We will pay the expense.

The Master: We are going to save some time, Mr. Chambers. The witness said that these contracts were between the Oil Company and the Kings County Lighting Company; do not take a lot of time with the signatures and the dates.

The Witness: They are all signed by me.

The Master: They are all executed contracts between your company and the Kings County Lighting Company?

The Witness: Yes, sir.

Q. Do you know Mr. Flook's signature to all of them?

A. Oh, yes. Not to all of them.

The Master: Offer them in evidence.

Mr. Chambers: If Mr. Ransom won't object.

The Master: The witness says they are executed contracts; that ends it.

Mr. Chambers: I offer them in evidence. He said they are the original signatures and I offer in evidence the contract identified by Mr. Higgins, dated September 5, 1912.

30557 The Master: Do you make the same objection as you did to the other contracts, Mr. Ransom?

Mr. Ransom: I do.

The Master: Objection overruled.

Marked Defendants' Exhibit AA-74.

Mr. Ransom: Is it the intention of counsel for the Attorney General to offer them all?

Mr. Chambers: I do not know.

The Master: I don't know, but if he does not you can offer the rest of them.

Mr. Chambers: Certainly.

Mr. Chambers: I offer in evidence contract dated January 19, 1914, between the Standard
30558 Oil Company of New York and the Kings County Lighting Company, identified by Mr. Higgins.

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. Ransom: Exception.

Marked Defendants' Exhibit AA-75.

Q. Where are the contracts prior to 1912, Mr. Higgins?

A. Well, if there were any they are destroyed. We do not retain papers any great length of time in our business.

Q. So you have not any beyond this one dated in 1919?

A. All I have I have given you, sir.

Q. Here is a contract (handing witness). This is your signature, and that is an original, is it?

A. Yes, sir.

Q. Between your company and the Kings County Lighting Company?

A. This is a copy; the original I have probably retained.

Q. But it has the original signatures?

A. Yes, sir. 30560

Q. Your signature?

A. Yes, sir.

Mr. Chambers: I offer this contract in evidence, dated March 16, 1910, between the Standard Oil Company and the Kings County Lighting Company.

Mr. Ransom: Same objection as before, and also on the ground that counsel has only offered part of them.

The Master: Overruled.

Mr. Ransom: Exception.

Marked Defendants' Exhibit AA-76.

Q. What other contracts have you got? 30561

A. Most anything you want, I think.

Q. What?

A. Most anything you want.

Q. What other companies, the New York & Richmond?

A. The Consolidated of New York, the Bronx.

Q. Here is the Brooklyn Borough of Coney Island; you produce contracts for 1914 and 1915, Mr. Higgins?

A. Yes, 1914 and 1915.

Q. Those are original contracts?

A. Yes, sir.

Q. And original signatures?

A. Yes, sir.

Q. That is the signature of Mr. Woodall of the Brooklyn Borough?

A. Oh, yes.

Mr. Chambers: I offer in evidence original contract produced by Mr. Higgins, dated June 17, 1914, between the Brooklyn Borough Gas Company of Coney Island and the Standard Oil Company.

Mr. Ransom: I object on the grounds previ-
30563 ously stated, and on the further ground that counsel is picking out only a few of the contracts.

The Master: Objection overruled. I will let you offer in the balance later.

Mr. Ransom: Well, I am only pointing out his method, or lack of it.

Mr. Chambers: Hand-picked evidence.

Marked Defendants' Exhibit AA-77.

Mr. Chambers: I offer in evidence original contract identified by Mr. Higgins, dated October 3, 1915, between the Brooklyn Borough Gas Company and the Standard Oil Company of
30564 New York.

Same objection, ruling and exception.

Marked Defendants' Exhibit AA-78.

Q. Why haven't you produced contracts between your company and the Brooklyn Borough Gas Company prior to 1912?

A. Haven't I?

Q. You have not. Why haven't you produced contracts between your company and the Brooklyn Borough prior to 1912?

A. All the papers in connection with those matters were destroyed years ago.

Q. Prior to 1914. Was there none for 1912?

A. I think not.

Q. If there had been you would have produced it?

A. Why, I have everything I could get here.

Q. We will take the New York & Richmond. You have produced two contracts, 1911 and 1912, and if there were any others after that date you would have produced them?

A. We did not hold the business after that date.

Q. But prior to that if there were any they were destroyed? 30566

A. I think so, yes.

Q. These are original contracts?

A. Yes, sir.

Q. Signed by you and signed by Mr. Shelton?

A. That one is (indicating)—yes, both of them.

Mr. Chambers: I offer in evidence contract, dated February 7, 1911, between the Standard Oil Company of New York and the New York & Richmond Gas Company.

The Master: That is received over the same objection, with the same ruling and exception.

Marked Defendants' Exhibit AA-79.

Mr. Chambers: Likewise, I offer in evidence 30567 the contract between the Standard Oil Company of New York and the New York & Richmond Gas Company, identified by Mr. Higgins, dated December 30, 1912.

The Master: It will be received over the same objection, ruling and exception.

Marked Defendants' Exhibit AA-80.

Q. I show you, Mr. Higgins, paper that came from the Public Service Commission, since you said that your contracts prior to 1911 have been destroyed, between your company and this company, the New

York & Richmond Gas Company. Can you say whether that is a copy of the contract entered into between your company and that company (handing witness)?

A. Well, it probably is, but I could not swear to it.

Q. How about this paper dated the 7th day of February, 1911?

Mr. Ransom: I object. These are mere copies produced by somebody.

The Master: Suppose Mr. Higgins can iden-
30569 tify them as copies? Wait and see. He said as to one he could not.

A. I cannot swear to either of them, sir. I do not know; I do not remember.

Q. Mr. Higgins, I show you paper dated May 24, 1906. Is that your original signature?

A. Yes, sir.

Q. Is that the signature of the treasurer of the New York & Richmond Gas Company?

A. I believe so; yes, sir.

Q. That is an original contract?

A. Yes, sir.

Mr. Chambers: I offer in evidence contract
30570 dated May 24, 1906, between the Standard Oil Company of New York and the New York & Richmond Gas Company.

The Master: It will be received over the same objection and exception.

Paper received in evidence and marked Defendants' Exhibit AA-81.

Q. I show you another paper bearing date October 31, 1908. Is that your signature at the bottom, Mr. Higgins?

A. Yes, sir.

Q. Is that the signature of the New York & Richmond Gas Company?

A. Yes, sir.

Mr. Chambers: I offer that in evidence, being contract dated October 13, 1908, between the Standard Oil Company of New York and the New York & Richmond Gas Co.

Mr. Ransom: I make the same objection, including the objection that they are only picking out a few of the contracts and offering them.

The Master: Objection overruled.

Mr. Ransom: Exception. 30572

Paper received in evidence and marked Defendants' Exhibit AA-82.

Q. Now, Mr. Higgins, you produce some contracts between your company and the Queens Borough Gas and Electric Company beginning with 1911?

A. Yes, sir; 1911 and 1912.

Q. You did not produce any prior to 1911?

A. No, sir.

Q. Because you didn't have them?

A. No, sir.

Q. They have been destroyed?

A. Yes, sir.

The Master: If there were any. 30573

The Witness: I assume from this paper that there were some.

Q. Does it show any?

A. It shows April 5, 1907, and April 6, 1909, but I haven't got those papers.

Q. I show you paper dated November 15, 1911.

A. Yes, sir.

Q. Is that a contract between your company and the Queens Borough Gas & Electric Company?

A. Yes, sir.

Q. Is that your original signature?

A. Yes, sir.

Q. And is that the signature of the president of the Queens Borough Gas & Electric Company?

A. Yes, sir.

Mr. Chambers: I offer that paper in evidence, being contract dated November 15, 1911, between the Standard Oil Company and the Queens Borough Gas & Electric Company.

The Master: It will be received over the same objection and exception.

30575 Paper received in evidence and marked Defendants' Exhibit AA-83.

Q. I now show you another paper bearing date April 30, 1914. Is that a contract between your company and the Queens Borough Gas & Electric Company?

A. It is.

Q. And those are the original signatures?

A. Yes, sir.

Mr. Chambers: I offer that in evidence, being contract dated April 30, 1914, between the Standard Oil Company and the Queens Borough Gas & Electric Company.

30576 The Master: It will be received over the same objections and exception.

Paper received in evidence and marked Defendants' Exhibit AA-84.

Mr. Ransom: I wish it to appear upon the record—

The Master: This is not the time to make it appear.

Mr. Chambers: In connection with my objection—

The Master: You have already said he is not offering all of them. That appear quickly when

you cross-examine Mr. Higgins and bring out the rest of them.

Q. I show you another paper, Mr. Higgins, between the Standard Oil Company and the Queens Borough Gas & Electric Company, dated April 6, 1909. Is that your signature?

A. Yes, sir.

Q. That is the original contract or duplicate original?

A. This is probably the original.

Q. That is the signature of the officer of that gas company? 30578

A. Yes, sir, Mr. Macy, right here.

Q. Is he here?

A. Yes, sir.

Mr. Chambers: I offer that paper in evidence, being contract dated April 6, 1909, between the Standard Oil Company of New York and the Queens Borough Gas & Electric Company.

The Master: It will be received over the same objections and exception.

Paper received in evidence and marked Defendants' Exhibit AA-85.

Q. I show you another paper dated April 5, 1907, between the Queens Borough Gas & Electric Company and the Standard Oil Company of New York. 30579 Is that the original?

A. Yes, sir.

Q. And are those the signatures of yourself and Mr. Macy, president of the Queens Borough Gas & Electric Company?

A. Yes, sir.

Mr. Chambers: I offer that paper in evidence, being contract dated April 5, 1907, between the Standard Oil Company and the Queens Borough Gas & Electric Company.

The Master: It will be received over the same objections and exception.

Paper received in evidence and marked Defendants' Exhibit AA-86.

Q. Now, the Bronx Gas & Electric Company, you have produced contracts here for 1911, 1914 and so on?

A. Yes, sir.

Q. I show you paper dated November 8, 1911, between yourself and the Bronx Gas & Electric Company. Is that Mr. Rosenquest's signature?

30581 A. Yes, sir.

Q. And your signature?

A. Yes, sir.

Mr. Chambers: I offer that in evidence, contract dated November 8, 1911, between the Bronx Gas & Electric Company and the Standard Oil Company.

The Master: It will be received over the same objection and exception.

Paper received in evidence and marked Defendants' Exhibit AA-87.

Q. Why didn't you produce contracts prior to 1911 between your company and the Bronx Gas &

30582 Electric Company. Were there any?

A. There was a contract for 1908, but I haven't got it. You may have it in your bundle.

Q. I show you another paper dated September 10, 1914, between yourself and the Bronx Gas & Electric Company. Is that your signature?

A. Yes, sir.

Q. And is that the signature of Mr. Rosenquest, the president of that company?

A. Yes, sir.

Mr. Chambers: I offer that paper in evidence, dated September 10, 1914, between the Bronx

Gas & Electric Company and the Standard Oil Company of New York.

The Master: It will be received over the same objection and exception.

Paper received in evidence and marked Defendants' Exhibit AA-88.

Q. I show you a paper, Mr. Higgins, that you spoke of a minute ago, dated July 23, 1908, a copy of a contract between your company and the Bronx Gas & Electric Company. Are you able to identify that as a copy?

A. Well, I can't say, but that is probably all right. 30584

Q. You have a note that there was such a paper?

A. 1908, yes, sir, July 23, 1908.

Q. Does your memorandum say how many gallons?

A. No, it does not.

Mr. Chambers: I ask that that paper be marked for identification.

Marked Defendants' Exhibit AA-89 for identification.

Q. Mr. Higgins, you produce some contracts between your company and the New York Mutual Gas Light Company?

A. Yes, sir. 30585

Q. Take the first one here?

A. 1911.

Q. Why didn't you produce any prior to 1911?

A. They have been destroyed.

The Master: I don't see any sense in asking this question each time. Wherever you do not produce contracts it is either because you didn't have a contract or it has been destroyed?

The Witness: Yes, sir.

The Master: That applies to every company?

The Witness: Yes, sir.

30586 C. M. Higgins, Direct.

Mr. Chambers: Then I won't need to ask him again.

Q. Is that the original, between your company and the New York Mutual Gas Light Company?

A. Yes, sir.

Q. Those are the original signatures?

A. Yes, sir.

Mr. Chambers: I offer in evidence that paper dated January 1, 1911, between the Standard Oil Company and the New York Mutual Gas Light Company.

30587 The Master: It will be received over the same objection and exception.

Paper received in evidence and marked Defendants' Exhibit AA-90.

Q. Have you a note of any prior to that?

A. Not prior to 1911, no.

Q. You apparently didn't do business with them?

A. Apparently did, yes, but I haven't any papers.

Q. I mean, have you a note there that there were contracts?

A. Why, yes, back to 1904.

Q. I show you another paper, dated December 3, 1912. Is that an original contract?

30588 A. Yes, sir.

Q. Are those the original signatures?

A. Yes, sir.

Mr. Chambers: I offer in evidence contract between the Standard Oil Company and the New York Mutual Gas Light Company, dated December 3, 1912.

The Master: It will be received over the same objections and exceptions.

Paper received in evidence and marked Defendants' Exhibit AA-91.

Q. I show you another paper, Mr. Higgins, dated

30589

June 30th, 1914. Is that an original contract produced by you?

A. Yes, sir.

Mr. Chambers: I offer that in evidence, being contract dated June 30, 1914, between the Standard Oil Company of New York and the New York Mutual Gas Light Company.

The Master: It will be received over the same objection and exception.

Paper received in evidence and marked Defendants' Exhibit AA-92.

30590

The Master: Are you giving back to Mr. Higgins those you are not using?

Mr. Chambers: I am going to give him a receipt—

The Master: No, I mean those that you have not marked.

Mr. Chambers: Oh, yes.

The Master: They are here on the table?

Mr. Chambers: Every paper that has not been marked is there.

Q. Have you produced some contracts between your company and the Brooklyn Union Gas Company?

A. Yes, sir.

30591

Q. The first one appears to be dated January 1, 1912. Were there some prior to that, according to your note?

A. Yes, sir.

Q. You have not produced them for the same reason?

A. That is right.

Q. Look at this contract dated January 1, 1912, between your company and the Brooklyn Union Gas Company. Is that the original?

A. Yes, sir.

Q. Are those the signatures of yourself and Mr. Jourdan?

A. Yes, sir.

Mr. Chambers: I offer in evidence that paper, being contract dated January 1, 1912, between the Standard Oil Company and the Brooklyn Union Gas Company.

The Master: It will be received over the same objection and exception.

Paper received in evidence and marked Defendants' Exhibit AA-93.

30593 Q. I show you another paper produced by you. Are those the original signatures?

A. Yes, sir.

Q. Of yourself and Mr. Jourdan?

A. Yes, sir.

Q. Mr. Jourdan of the Brooklyn Union Gas Company?

A. Yes, sir.

Mr. Chambers: I offer in evidence contract dated November 22, 1912, between the Standard Oil Company of New York and the Brooklyn Union Gas Company.

The Master: It will be received over the same

30594 objection and exception.

Paper received in evidence and marked Defendants' Exhibit AA-94.

Q. I show you another paper dated June 10, 1913. Are those the original signatures of yourself and Mr. Jourdan of the Brooklyn Union Gas Company?

A. Yes, sir.

Mr. Chambers: I offer that paper in evidence, being contract dated June 10, 1913, between the Standard Oil Company of New York and the Brooklyn Union Gas Company.

The Master: It will be received over the same objection and exception.

Paper received in evidence and marked Defendants' Exhibit AA-95.

Q. I show you another paper and ask you if that is an original contract?

A. Yes, sir.

Q. Are those the signatures of yourself and Mr. Jourdan?

A. Yes, sir.

Mr. Chambers: I offer that contract in evidence, being contract dated June 30, 1914, be- 30596
tween the Standard Oil Company of New York and the Brooklyn Union Gas Company.

The Master: It will be received over the same objection and exception.

Paper received in evidence and marked Defendants' Exhibit AA-96.

Q. You have produced now, have you, Mr. Higgins, all the contracts called for by the subpoena?

A. Yes, sir.

Q. All that you can find?

The Witness: Yes, sir.

Q. You did not produce any contract between your company and the New York & Queens, did you, 30597
Mr. Higgins?

A. I did not.

Q. Why didn't you? Didn't you find those?

A. Those were back in 1905, 1907 and 1908.

Q. I show you a photostatic copy of a contract between your company and the New York & Queens, dated March 3, 1905. Is that your signature?

A. It looks very much like it.

Q. And the signature of the vice president of Queens?

A. Yes, sir.

Mr. Chambers: I offer that in evidence, being photostatic copy of a contract dated March 3, 1905, between the Standard Oil Company and the New York & Queens, of Flushing.

Mr. Ransom: In view of the fact that counsel is not offering all of these New York & Queens contracts, I object to it as not properly proved, in addition to the other grounds previously urged.

Mr. Chambers: Mr. Higgins has not the rest of them.

30599 The Master: Where did you get these from, Mr. Chambers?

Mr. Chambers: From the Public Service Commission.

The Master: Has the New York & Queens man been subpoenaed?

Mr. Chambers: I think so.

The Master: I won't let you offer copies, photostatic or otherwise, until you have exhausted the search for the originals.

(Mr. Chambers to representative of New York & Queens Company: Will you produce all the contracts which you have between your company and the Standard Oil Company of New York?)

30600

Mr. Ransom: If counsel will put in all of the contracts I will consent that these copies be produced.

The Master: We have heard that speech several times. You know perfectly well that he won't do it. What is the use of wasting time?

Q. I show you a letter, dated February 7, 1913. Does that refresh your recollection that you refused an order from the New York & Queens for 100,000

gallons of gas oil on February 7, 1913, because your source of supply was falling away?

A. Yes, sir; it so states.

Q. So sometimes your source of supply falls away?

A. You ought to be in the game a little while and you would find out.

Mr. Chambers: I offer in evidence letter dated February 7, 1913, from Mr. Higgins, to the New York & Queens Company.

Mr. Ransom: Objected to as incompetent and as having no bearing on the issues of this case, and not binding as against the complainant company. 30602

The Master: I suppose later on you will offer it yourself, won't you?

Mr. Chambers: They say the Standard Oil Company is the only one who is sure of its source of supply?

The Master: I will receive that.

Mr. Ransom: Exception.

Letter received in evidence and marked Defendants' Exhibit AA-97.

Q. I show you a contract between your company and the New York & Queens, or a paper, dated September 25, 1908. Is that your signature, Mr. Higgins? 30603

A. Yes, sir.

Q. Apparently that does not contain the signature of the New York & Queens?

A. I don't understand that.

Q. You undoubtedly exchanged copies and they didn't sign their own copies. Was that a contract in force?

A. I cannot say as to that.

The Master: Is that paper signed by you?

The Witness: Yes, sir.

The Master: I will receive it.

Mr. Chambers: I offer that in evidence, being contract dated September 25, 1908, between the Standard Oil Company and the New York & Queens.

The Master: It is produced by the New York & Queens, is it?

Mr. Chambers: Yes.

The Master: I will receive it as a contract binding on the Standard Oil, over the same objection and exception.

30605 Paper received in evidence and marked Defendants' Exhibit AA-98.

Q. I show you another contract, dated April 1, 1907. Are those the original signatures?

A. Yes, sir.

Mr. Chambers: I offer in evidence contract dated April 1, 1907, between the Standard Oil Company of New York and the New York & Queens Gas Company.

The Master: It will be received over the same objection and exception.

Paper received in evidence and marked Defendants' Exhibit AA-99.

30606 Q. I show you a contract dated March 3, 1905. Is that a contract between your company and the New York & Queens Gas Company?

A. Yes.

Mr. Chambers: I offer that in evidence, being contract dated March 3, 1905.

The Master: Received over the same objection as Exhibit AA-100.

Mr. Chambers: Is the Brooklyn Union Gas Company here in court?

Mr. Jourdan: Yes.

Mr. Chambers: Have you got the originals of the contracts between your company and the Standard Oil Company?

Mr. Jourdan: Yes, sir; the originals and photostatic copies.

Mr. Ransom: In the case of the Brooklyn Union they have photographic copies and also the originals. I will consent that the photographic copies produced by Mr. Jourdan be used.

Q. I show you a paper.

The Master: Don't I understand, Mr. Ransom, that you agreed that these papers produced 30608
by Mr. Jourdan, photographic copies of the original contracts, should be used?

Mr. Ransom: I so agree, yes.

The Master: Just offer them.

Mr. Chambers: I offer in evidence contracts dated July 8, 1904, between the Standard Oil Company of New York and the Brooklyn Union Gas Company.

The Master: Received over the same objection, no objection being made to its being a photostatic copy.

Mr. Ransom: I understand both sides may use photostatic copies of this company's contracts? 30609

Mr. Chambers: Yes.

Paper received in evidence and marked Defendants' Exhibit AA-101.

Mr. Chambers: I now offer in evidence contract dated November 1, 1916, between the Brooklyn Union and the Standard Oil Company of New York.

The Master: Received over the same objection as Exhibit 102.

Mr. Chambers: I offer in evidence contract between the Standard Oil Company and the Brooklyn Union, dated January 1, 1911.

The Master: Received over the same objection as Exhibit AA-103.

Mr. Chambers: I offer in evidence contract between the Brooklyn Union and the Standard Oil Company of New York, dated January 1, 1912.

The Master: Received over the same objection and marked Exhibit AA-104.

By Mr. Chambers:

Q. I show you paper dated June 24, 1904, Mr. Higgins. Do you recognize the signature on that
30611 paper of the assistant treasurer of your company?

A. Yes, sir.

Q. That is his signature?

A. Yes, sir.

Q. I will ask you the next one. Is that his signature, too?

A. Yes.

Q. And do you recognize the signature of the president of the New York Mutual Gas Light Company?

A. That is his, R. M. G. Both men are dead.

Mr. Chambers: I offer in evidence these three letters dated June 24, 1904, June 24, 1904, and June 24, 1904, respectively.

30612 Mr. Ransom: Same objection.

The Master: Same ruling; received as Exhibit AA-105.

Q. I show you paper dated July 1, 1907. Is that the original signature of yourself and the president of the New York Mutual?

A. It is.

Mr. Chambers: I offer that in evidence, being contract dated July 1, 1907, between the New York Mutual and the Standard Oil Company of New York.

The Master: Same objection; same ruling and exception; received as Exhibit AA-106.

30613

Q. I show you what seems to be a copy of agreement dated January 1, 1911. You have a note that there was such an agreement?

A. Yes, I have.

Q. You cannot tell us whether that is a copy, can you?

A. I assume it is, yes.

Mr. Chambers: I offer that in evidence.

Q. Your original has been destroyed?

A. I haven't got the original.

The Master: Where did you get this from?

30614

Mr. Chambers: From the New York Mutual

Mr. Ransom: Same objection.

The Master: Not because it is a copy?

Mr. Ransom: No.

The Master: Same ruling, received as Exhibit AA107.

Q. I show you another paper dated December 3, 1912. That is the original signature of yourself?

A. There is an original here.

Q. I guess I offered that in evidence. It is already in evidence?

A. It is one of the checked copies here, December 2d.

30615

Q. Mr. Higgins, do you recall that this contract dated May 21, 1913, was cancelled, between your company and the New York Mutual?

A. May 21, 1913?

Q. Yes.

A. I do not know.

Mr. Chambers: I offer in evidence this contract dated May 21, 1913, between the New York Mutual and the Standard Oil Company of New York. There is no objection made because it is a copy and not an original.

Mr. Ransom: I do not object because it is a

copy, but I do object on the grounds previously stated.

The Master: Objection overruled, received as Defendants' Exhibit AA-108.

Q. I show you copy of letter dated November 29, 1911, from the New York Mutual to the Standard Oil Company, to yourself as manager of the Standard Oil, and your letter acknowledging receipt of that. Do those form the basis of some agreement in regard to oil?

Mr. Ransom: They speak for themselves?

30617 A. Yes, sir; that is an option that was executed.

Q. It was executed?

A. Yes, sir; it says so.

Mr. Chambers: I offer this option in evidence which the witness says was executed, dated November 29, 1911, and the acceptance by the Standard Oil Company dated December 1, 1911.

The Master: Received in evidence over the same objection, as Defendants' Exhibit AA-109.

Q. I show you three more letters, one dated November 27, 1912, another dated November 29, 1912, and still another dated December 2, 1912. Those letters passed between yourself and the New York Mu-

30618 tual and formed the basis of some agreement?

A. Yes, sir.

Mr. Chambers: I offer the three letters in evidence.

The Master: Received over the same objection and exception, as Exhibit AA-110.

Mr. Chambers: No objection because we use copies of the letters?

Mr. Ransom: No.

Mr. Chambers: I am going to suggest that just as soon as we can we substitute copies for all of these contracts and give the companies back their originals.

30619

The Master: You can give the companies back the originals now, if they want them.

Mr. Chambers: We want to check them up.

The Master: If Mr. Higgins says he won't leave them here I am not going to impound them. I am agreeable to anything that Mr. Higgins will do.

The Witness: Well, yes, we will leave them here.

The Master: Give Mr. Higgins a receipt, he says he will leave them here.

30620

Mr. Chambers: What does counsel say to substituting copies in place of the originals?

The Master: There is no objection to that.

Mr. Ransom: If you will give back the New York Mutual ones, we will furnish you copies and they may be substituted as originals.

The Master: Are you through with Mr. Higgins, on direct?

Mr. Chambers: I am just checking up to see.

Mr. Chambers: There is one Bronx Gas & Electric Company contract that we would like to ask about and we have not been able to find here.

30621

The Master: Have you a copy?

Mr. Chambers: We have the original here somewhere and we cannot find it.

The Master: That Mr. Higgins produced?

Mr. Chambers: That Mr. Rosenquest handed to us. I wanted Mr. Higgins to identify it.

The Witness: I have six here.

The Master: What year is it?

Mr. Chambers: It is 1908. You did not have that, Mr. Higgins.

Q. Mr. Higgins, I show you copies of correspondence between the Assistant Treasurer of the New

30622 C. M. Higgins, Cross.

York Mutual and Mr. Galloway, President of the New York Mutual. Those form the basis, do they, of the contract for oil?

The Master: The Assistant Treasurer of the New York Mutual and the President of the New York Mutual?

Mr. Chambers: No, Mr. Howe, Assistant Treasurer of the Standard Oil Company, and Mr. Galloway, President of The New York Mutual.

Mr. Ransom: That is not anything produced
30623 by the New York Mutual, is it?

Mr. Chambers: Taken from the Public Service Commission—your old commission.

A. I think likely that is all right. I do not know that I have seen the papers before.

Q. Are you able to identify this Defendants' Exhibit AA-9, a contract between your company and the Standard Oil Company, which is a copy?

The Master: It must have been identified in some way or I should not have marked it.

Mr. Ransom: It is marked for identification.

The Master: That is it; it is just marked for identification.

30624 A. I think likely it is a copy of a contract.

Mr. Chambers: We will have the original in a few minutes.

The Witness: If I had it, it is among the papers I gave you.

Mr. Chambers: That is all.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Higgins, you recently quoted a price to Mr. Rosenquest, President of the Bronx Gas & Electric Company, of 7.55 cents per gallon?

Mr. Chambers: I object to him putting the amount in. Let him ask him what the price was.

'30625

The Master: Objection overruled.

Mr. Chambers: Exception.

A. I did.

Q. And subsequently made a contract under date of December 20, 1919?

A. Yes, sir.

The Master: My complaint is that the first question is unnecessary. Let us get right to it. I should imagine you would be as anxious to save time as anybody else. It does not get us anywhere to say, "Did you quote a price," and then "make a contract." If he made a contract, that is the best evidence.

'30626

Q. And in December, 1919, did you make a contract with the Brooklyn Union Company at prices ranging from 7.05 cents—

Mr. Chambers: I object to that unless he offers the contract in evidence.

Q. (Continued.) To 7.63 cents per gallon?

The Master: It is proper cross-examination.

Mr. Chambers: Exception.

A. Yes, sir.

Q. And in the month of January, 1920, have you quoted a price to the Kings County Lighting Company in excess of eight cents a gallon?

'30627

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, not proper cross-examination.

The Master: Overruled.

Mr. O'Brien: Does your Honor hold that in cross it is admissible to state the quotations that did not end in contracts?

The Master: Yes, leading questions are admissible in cross-examination.

Mr. O'Brien: I mean the offer to sell?

The Master: Yes.

30628 C. M. Higgins, Cross.

Mr. O'Brien: We claim it is not admissible here where it did not terminate in a contract.

The Master: Practically any question on cross-examination that has a bearing upon proof already offered.

Mr. Ransom: Is that the fact, Mr. Higgins?

A. Yes, sir.

Mr. O'Brien: My exception is noted.

Mr. Chambers: Exception to the ruling.

Q. I show you three contracts of your company with the Kings County Lighting Company, dated April 3, 1916, November 2, 1917, and December 16, 1918, respectively. These are original contracts produced by you (handing witness)?

30629

A. I think so, yes.

Q. And bearing your signature and that of Mr. Fiook?

A. Yes.

The Master: These were produced in addition to those offered by Mr. Chambers, were they?

Mr. Ransom: These are three that Mr. Chambers did not offer.

The Witness: These were three that were in the bundle I had, that Mr. Chambers looked through.

30630

Mr. Ransom: I offer in evidence the contract dated April 3, 1916.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Chambers: Exception.

Marked Complainant's Exhibit 412.

Mr. Ransom: That of November 2, 1917. I offer.

The Master: Same objection, ruling and exception. Same objection, Mr. Chambers?

Mr. Chambers: Yes, same objection.

The Master: Same ruling.

Mr. Chambers: Exception.

Marked Complainant's Exhibit 413.

Mr. Ransom: And the agreement dated December 16, 1918.

The Master: Same ruling and exception.

Mr. Chambers: Same objection and exception.

Marked Complainant's Exhibit 414.

Q. You also produced here, Mr. Higgins, copies of 30632
letters signed by you under date of January 8, 1919, and January 20, 1919, addressed to the General Manager of the Kings County Lighting Company, notifying of advances in contract price by reason of increased transportation cost (handing witness)?

A. Yes, sir.

Mr. Ransom: I offer in evidence the letter dated January 8, 1919.

Mr. Chambers: Same objection.

The Master: Do you object on the ground it is the copy and not the original?

Mr. Chambers: Let us see the letter (taking letter). You have the original of that letter, 30633
Mr. Higgins?

The Witness: Well, I do not know; I did not bring it here.

The Master: You would have the original if you wrote this letter to the gas company?

The Witness: Yes, that is a copy of it.

Mr. Chambers: Where does this letter come from?

The Witness: I do not know.

Q. That is with your contract.

A. Yes. They have the original letter.

By Mr. Chambers:

Q. Was there an original letter of which this is a copy?

A. Oh, yes.

Q. You are sure of it?

A. Yes.

Q. Just like that?

A. Oh, yes.

Mr. Chambers: I do not object on the ground it is a copy; I object on the ground it is incompetent, irrelevant and immaterial.

30635 The Witness: In the subpoena you asked for all contracts and papers and you took them out.

The Master: Same ruling.

Mr. Chambers: Exception.

Marked Complainant's Exhibit 415.

By Mr. Ransom:

Q. Did you likewise produce under the subpoena this letter dated January 20th, which is a copy?

A. Yes, sir.

Mr. Ransom: I offer that in evidence.

Mr. O'Brien. Same objection.

The Master: Not on the ground that it is a copy?

30636 Mr. O'Brien: No.

The Master: Same ruling.

Mr. O'Brien: Exception.

Marked Complainant's Exhibit 416.

Q. Did you also produce here under Mr. Chambers' subpoena two contracts with the Queens Borough Gas and Electric Company, one dated July 6, 1917, the other dated June 22, 1916?

A. Yes, sir; we produced those.

Mr. Ransom: I offer in evidence the contract dated June 22, 1916.

The Master: From what company?

Mr. Ransom: The Queens Borough Gas and Electric Company.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial. The complainant has closed its case.

The Master: Overruled.

Mr. Chambers: Exception.

Marked Complainant's Exhibit 417.

Mr. Ransom: And July 6, 1917.

Mr. Chambers: Same objection.

The Master: Same ruling.

Mr. Chambers: Exception. 30638

Marked Complainant's Exhibit 418.

Q. These are both original contracts bearing your signature and that of Mr. Macy?

A. Yes.

Mr. Chambers: I want to state on the record that one of my objections to these offers is that complainant has rested its case and is now offering further evidence here while we are presenting our case.

The Master: The ruling stands.

Mr. Chambers: Which your Honor would not permit us to do while he was presenting his case, and you would not allow us to present ours when he objected. 30639

Q. Do you identify this contract dated August 1, 1903, between the Standard Oil Company of New York and the New York & Richmond Gas Company, as an original contract bearing your signature and that of Mr. Shelton of the New York & Richmond Gas Company (handing witness)?

A. Yes, sir.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: I object on the ground it is incompetent, irrelevant and immaterial, not cross-

examination.

The Master: It is received.

Mr. Chambers: Offering evidence of his own while we are presenting our case.

The Master: It will be received. Overruled.

Mr. Chambers: Exception.

Marked Complainant's Exhibit 419.

Q. Do you identify this agreement dated February 7, 1911, between the Standard Oil Company of New Jersey and the New York & Richmond Gas Company, as an original agreement bearing your signa-
30641 ture and that of Mr. Shelton (handing witness)?

A. I do, with the correction that it is the Standard Oil Company of New York and not of New Jersey.

Q. Of New York?

A. Yes.

The Master: Do you offer that? Same objection?

Mr. Chambers: I did not hear him offer it.

Mr. Ransom: I offer it.

Mr. Chambers: I object on the same grounds, and except to the ruling.

The Master: Same ruling.

Marked Complainant's Exhibit 420.

30642 Q. Do you identify this agreement dated December 30, 1912, between the Standard Oil Company of New York and the New York & Richmond Gas Company, as an original document bearing your signature and that of Mr. Shelton (handing witness)?

A. I do, sir.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: The same objection as last stated.

The Master: Same ruling.

Mr. Chambers: Exception.

Marked Complainant's Exhibit 421.

Q. Did you also produce here under Mr. Chambers' subpoena this original agreement, dated December 5, 1916, between your company and the Brooklyn Borough Gas Company (handing witness)?

A. Yes, sir.

Q. And that bears your signature and that of Mr. Woodall?

A. Yes, sir.

Q. The General Manager of that company?

A. Yes, sir.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: Objected to as incompetent, 30644
irrelevant and immaterial, not proper cross.

The Master: Overruled.

Mr. Chambers: Exception.

Marked Complainant's Exhibit 422.

Q. Did you likewise produce this agreement between your company and the Brooklyn Borough Company, dated December 12, 1917, and does this likewise bear your signature and that of Mr. Woodall?

A. It does.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: Same objection.

The Master: Same ruling.

Mr. Chambers: Exception. 30645

Marked Complainant's Exhibit 423.

Q. On or about May 15, 1918, did your company write to Mr. Woodall, General Manager of the Brooklyn Borough Gas Company, notifying of an increase in the contract price effective June 15, 1918, by reason of increased cost of transportation?

A. Yes, sir.

Q. And have you produced that also under the subpoena, with that contract?

A. Yes, sir. This you took out of the contract (indicating letter)?

30646 C. M. Higgins, Cross.

Q. Yes.

A. Yes, sir.

Mr. Ransom: I offer in evidence this copy produced by Mr. Higgins.

Mr. Chambers: Same objection.

The Master: Same ruling.

Mr. Chambers: Exception.

Marked Complainant's Exhibit 423A.

Q. Have you likewise produced here under Mr. Chambers' subpoena this agreement made November 27, 1918, between your company and the Brooklyn
30647 Borough Gas Company, and does this bear likewise the signatures of yourself and Mr. Woodall (handing witness)?

A. Yes, sir.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: Same objection.

The Master: Same ruling.

Mr. Chambers: Exception.

Marked Complainant's Exhibit 424.

Q. In connection with that contract did you produce here under the subpoena a copy of a letter sent by your company to Mr. Woodall under date of January 20, 1919, notifying of an increase in the contract
30648 price effective February 8, 1919, by reason of advance in transportation cost (handing witness)?

A. Yes, sir.

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

The Master: Not because it is a copy?

Mr. Chambers: No, not if Mr. Higgins says there was a copy—an original like it.

The Master: Overruled.

Mr. Chambers: Exception.

Marked Complainant's Exhibit 425.

Q. Also a letter on the same subject, sent by you to Mr. Woodall, under date of January 8, 1919 (handing witness)?

A. Yes, sir.

Q. There was an original letter of which that is a copy?

A. Yes, sir.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: Same objection.

The Master: Same ruling.

Mr. Chambers: Exception.

Marked Complainant's Exhibit 426. 30650

Q. Mr. Higgins, do you identify this as a photostatic copy of an agreement made the 22nd day of December, 1919, between the Standard Oil Company of New York and the Brooklyn Union Gas Company, bearing the signature of yourself and Mr. George Jourdan (handing witness)?

A. Yes, sir.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial, not proper cross.

The Master: Same ruling.

Mr. Chambers: It should be offered in rebuttal, if at all. Exception to the ruling. 30651

Marked Complainant's Exhibit 427.

Q. Do you identify this as the photostatic copy of an agreement dated March 26, 1919, between the Standard Oil Company of New York and the Brooklyn Union Gas Company, bearing the signatures of yourself and Mr. Jourdan?

A. Yes, sir.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: Same objection as last stated.

The Master: Objection overruled.

Mr. Chambers: Exception.

30652 C. M. Higgins, Cross.

Paper received in evidence and marked Complainant's Exhibit 428.

Q. Do you identify this paper as a photostatic copy of an agreement made December 12, 1918, between your company and the Brooklyn Union Gas Company?

A. Yes, sir.

Q. Bearing the signatures of yourself and Mr. Jourdan?

A. I do.

Mr. Ransom: I offer this in evidence.

30653 Mr. Chambers: I object to it on the same grounds.

The Master: Objection overruled.

Mr. Chambers: Exception.

Paper received in evidence and marked Complainant's Exhibit 429.

Q. Do you identify this paper as a photostatic copy of an agreement made December 11, 1917, between the Standard Oil Company of New York and the Brooklyn Union Gas Company?

A. Yes, sir.

Q. Bearing the signatures of yourself and Mr. Jourdan?

30654 A. I do.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: Objected to as incompetent, immaterial and irrelevant, and not proper cross-examination.

The Master: Same ruling.

Mr. Chambers: Exception.

Paper received in evidence and marked Complainant's Exhibit 430.

Q. Do you identify this paper as a photostatic copy of an agreement made November 1, 1916, between

the Standard Oil Company of New York and the Brooklyn Union Gas Company?

A. Yes, sir.

Q. Bearing the signatures of yourself and Mr. Jourdan?

A. I do.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: I make the same objection as last stated.

The Master: Objection overruled.

Mr. Chambers: Exception.

Paper received in evidence and marked Complainant's Exhibit 431. 30656

Q. Do you identify this paper as a photostatic copy of an agreement made June 13, 1914, between the Standard Oil Company of New York and the Brooklyn Union Gas Company?

A. Yes, sir.

Q. Bearing the signatures of yourself and Mr. Jourdan?

A. Yes, sir.

Mr. Ransom: I offer that in evidence.

Mr. Chambers: Same objection.

The Master: Objection overruled.

Mr. Chambers: Exception. 30657

Paper received in evidence and marked Complainant's Exhibit 432.

Q. Do you identify this paper as a photostatic copy of an agreement made November 22, 1912, between the Standard Oil Company of New York and the Brooklyn Union Gas Company?

A. Yes, sir.

Q. Bearing the signatures of yourself and Mr. Jourdan?

A. Yes, sir.

30658 C. M. Higgins, Cross.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: I make the same objection.

The Master. Same ruling.

Mr. Chambers: Exception.

Paper received in evidence and marked Complainant's Exhibit 433.

Q. Do you identify this paper as a photostatic copy of an agreement made June 10, 1913, between the Standard Oil Company of New York and the Brooklyn Union Gas Company, bearing the signatures of Mr. Jourdan and yourself?

30659 A. I do.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: I make the same objection.

The Master: Objection overruled.

Mr. Chambers: Exception.

Paper received in evidence and marked Complainant's Exhibit 434.

Q. In connection with these two contracts, do you identify this as a photostatic copy of a letter dated June 27, 1918, sent by you to Mr. Jourdan, President of the Brooklyn Union Gas Company?

A. Yes, sir.

Q. Notifying of an increase in price under the

30660 contract?

A. Yes, sir.

Mr. Ransom: I offer this in evidence.

Mr. Chambers: I make the same objection.

The Master: Objection overruled.

Mr. Chambers: Exception.

Paper received in evidence and marked Complainant's Exhibit 435.

Q. Do you similarly identify this as a photostatic copy of a letter dated May 15, 1908, sent by you to Mr. Jourdan, President of the Brooklyn Union Gas Company, notifying of an increase in the contract price?

30661

A. I do.

Mr. Ransom: I offer this in evidence.

Mr. Chambers: Same objection.

The Master: Objection overruled.

Mr. Chambers: Exception.

Paper received in evidence and marked Complainant's Exhibit 436.

Q. Do you similarly identify this as a photostatic copy of a letter dated January 20, 1919, sent by you to Mr. Jourdan as President of the Brooklyn Union Gas Company, notifying of an increase in the contract price?

30662

A. I do.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: Same objection as before.

The Master: Same ruling.

Mr. Chambers: Exception.

Paper received in evidence and marked Complainant's Exhibit 437.

Q. And do you similarly identify this paper as a photostatic copy of a letter sent by you to Mr. Jourdan under date of January 8, 1919, notifying of an increase in the contract price?

A. I do.

30663

Mr. Ransom: I offer it in evidence.

Mr. Chambers: Same objection.

The Master: Objection overruled.

Mr. Chambers: Exception.

Paper received in evidence and marked Complainant's Exhibit 438.

Q. Mr. Higgins, did you also produce hereunder Mr. Chambers, subpoena, an original agreement made October 3, 1916, between the Standard Oil Company of New York and the New York Mutual Gas Light Company, bearing your signature?

A. Yes, sir.

Q. And that of Mr. Galloway?

A. Yes, sir.

The Master: You have four or five of these?

Mr. Ransom: Yes, sir.

The Master: Identify them all, and then offer them.

Q. Also agreement dated December 11, 1917, between the same companies?

A. Yes, sir.

Q. Signed by yourself and Mr. Parkhurst, vice president of the New York Mutual Gas Light Com-
30665 pany?

A. Yes, sir.

Q. In connection with that contract a letter, dated May 15, 1918, sent by you to Mr. Parkhurst, Vice President of the New York Mutual Gas Light Company, notifying of an advance in the contract price?

A. Yes, sir.

Q. Similarly, an agreement dated March 26, 1919, between the Standard Oil Company of New York and the New York Mutual Gas Light Company, signed by yourself and Mr. Parkhurst?

A. Yes, sir.

Q. And an agreement, dated December 18, 1918,
30666 between the same companies, signed by yourself and Mr. Parkhurst?

A. Yes, sir.

Mr. Ransom: I offer the four contracts and the letter in evidence.

Mr. Chambers: I object to each of them severally upon the grounds stated, and on the further ground that they are incompetent, irrelevant and immaterial, and not proper cross-examination.

The Master: Objection overruled.

Mr. Chambers: Exception.

Contract of October 3, 1916, marked Complainant's Exhibit 439.

Contract of December 11, 1917, received in evidence and marked Complainant's Exhibit 440.

Letter of May 15, 1918, received in evidence and marked Complainant's Exhibit 441.

Contract of March 26, 1919, received in evidence and marked Complainant's Exhibit 442.

Contract of December 18, 1918, received in evidence and marked Complainant's Exhibit 443.

Q. Do you identify this, Mr. Higgins, as an original contract signed by yourself and Mr. Wilson, between the Standard Oil Company of New York and the Newtown & Flushing Gas Company, dated April 27, 1904? 30668

A. I do.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: I object to it on the same ground.

The Master: Objection overruled.

Mr. Chambers: Exception.

Paper received in evidence and marked Complainant's Exhibit 444.

Q. Do you identify this as an original contract, dated December 20, 1919, between the Standard Oil Company of New York and the Bronx Gas & Electric Company? 30669

A. Yes, sir.

Q. Signed by yourself and the vice president of that company?

A. Yes, sir.

Q. This was produced by you under subpoena today?

A. Yes, sir.

Mr. Ransom: I offer it in evidence.

The Master: Identify them all and offer them together.

Q. An agreement dated November 26, 1918, between the same companies.

A. Yes, sir.

Q. Similarly signed.

A. Yes, sir.

Q. In connection with that, copies of letters sent by you to Mr. Rosenquest of the Bronx Gas & Electric Company, one dated January 8, 1919, and one dated January 20, 1919, notifying of advances in
30671 the contract price under the contract?

A. Yes, sir.

Q. Also contract dated December 12, 1917, between the same companies?

A. Yes, sir.

Q. And similarly signed?

A. Yes, sir.

Q. In connection with that contract a letter dated May 15, 1918, copy of a letter, sent by you to Mr. Rosenquest?

A. Yes, sir.

Q. Notifying of an advance in the contract price?

A. Yes, sir.

30672 Q. Also a contract between the same companies, dated October 2, 1916?

A. Yes, sir.

Q. Similarly signed?

A. Yes, sir.

Mr. Ransom: I offer the contracts and letters in evidence.

Mr. Chambers: Same objection to each respectively.

The Master: Objection overruled.

Mr. Chambers: Exception.

Contract of December 20, 1919, received in evidence and marked Complainant's Exhibit 445.

Contract of November 26, 1918, received in evidence and marked Complainant's Exhibit 446.

Letter of January 20, 1919, received in evidence and marked Complainant's Exhibit 447.

Letter of January 8, 1919, received in evidence and marked Complainant's Exhibit 448.

Contract of December 12, 1917, received in evidence and marked Complainant's Exhibit 449.

Letter of May 15, 1918, received in evidence and marked Complainant's Exhibit 450. 30674

Contract of October 2, 1918, received in evidence and marked Complainant's Exhibit 451.

Q. Mr. Higgins, is it a fact that there is now and has been for some time a great shortage in gas oil?

Mr. Chambers: I object to that as immaterial and not proper cross-examination.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. Yes, sir.

Q. Have you ever known when there was so great a shortage in any recent years, Mr. Higgins?

Mr. O'Brien: I make the same objection.

The Master: I overrule the objection. 30675

Mr. O'Brien: Exception.

A. No, sir.

Q. To what is that due?

A. Supply and demand.

Q. Will you indicate some of the factors which have tended to increase the demand?

Mr. O'Brien: Your Honor, I object to that. The witness is not qualified as an expert on the prices of oil.

The Master: Objection overruled.

Mr. O'Brien: Will you let me cross-examine the witness as to this matter?

The Master: No.

Mr. O'Brien: I think if the witness is examined that he doesn't know about any of the conditions of other companies and the prices they ask—

The Master: He is asking about his own company. You have called Mr. Higgins to produce contracts showing prices made with certain gas companies. That opens the door to inquiry as to the cost of oil.

Mr. O'Brien: I note my objection, on the
30677 ground that the witness is not qualified on the prices of oil and upon future conditions.

The Master: I shall assume that any man who is a director of the Standard Oil Company of New York and connected with that institution and oil companies for twenty or thirty years, knows something about the prices of oil and oil conditions.

Mr. O'Brien: Exception.

(Question read as follows):

"Q. Will you indicate some of the factors which have tended to increase the demand?"

A. The increased call for naphtha for internal
30678 combustion engines for automobile purposes; the increase of the uses of kerosene oil, lubricating oil of all grades.

Q. Has there been a great increase in the export of oil by American oil companies.

Mr. O'Brien: I object to that on the ground that it is incompetent, irrelevant and immaterial, the witness not having been shown to be acquainted with conditions outside of his own company. On the further ground that the question is vague. It does not specify any particular pe-

riod from another. He is not asking as to the year 1920, or the year 1919, or the period prior to the armistice of November 11, 1918?

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. There has been.

Q. Do you know whether that increase is as much as ten times during the last ten years?

Mr. Chambers: I object to that. It is entirely foreign to the issues in this case, and is incompetent, irrelevant and immaterial.

The Master: Objection overruled. 30680

Mr. Chambers: Exception. Maybe there is ten times more supply, who knows.

The Master: Well, we will get at that.

Mr. O'Brien: If the Court please, it means bringing in the statistics of the Fuel Administration, and the statistics of the Trade Board, on the question of exportations. If that is gone into we may get something illuminating, but it is going to take a whole lot of time to put it in.

The Master: Well, I have taken since the 15th of last July, and I guess I can take more time.

The Witness: What is the question?

The Master: Has it increased ten times? 30681

The Witness: Well, I hardly think ten times.

The Master: How much has it increased in the last few years?

Mr. O'Brien: I am going to object further. He does not state specifically any particular kind of oil, the witness does not come here with any data. He is asked a general question as to whether in ten years it has increased ten times, and that does not serve any good purpose.

30682 C. M. Higgins, Cross.

The Master: Before we get through we may have Mr. Higgins' statement that is definite, and perhaps useful.

Q. Has it increased many times during the last ten years?

A. Yes, sir.

Q. Has the consumption of fuel oil by railroads very greatly increased?

A. It has.

Q. More than doubled?

A. Yes, sir.

30683 Q. Is there many times as much gasolene now used as was used a few years ago?

A. Oh, yes.

By the Master:

Q. Well, the use of gasolene does not affect the quantity of gas oil, does it, Mr. Higgins?

A. Oh, yes.

Q. How?

A. Well, the more naphtha that you must produce the less gas oil you have.

Q. In other words you mean you take more out of the crude?

30684 A. We take more out of the gas oil. The gas oil is put under heavier pressure, and we get a large amount of other material from the gas oil. The materials consist of kerosene and naphtha. It is rerun and finished for internal combustion engines and automobiles.

Q. That reduces the quantity that is left?

A. That reduces the quantity of oil that is left.

By Mr. Ransom:

Q. Also lubricating oil?

A. Yes, sir.

Q. And the increased demand for these various products into which gas oil may be broken up, and the

increased prices of such products affect the prices of gas oil?

Mr. Chambers: I object to that as embodying several questions in one, and no proper foundation laid, and assuming things not proven.

The Master: Objection overruled.

Mr. Chambers: Exception.

The Master: Yes, sir.

Q. Has there been a great increased demand for lubricating oil for various kinds of machinery?

A. Yes, sir.

Q. And a sharp increase in the prices of lubricating 30686
oil?

A. Yes, sir.

Mr. O'Brien: Just a minute. Here we have a question that may refer to ten years, it may refer to five, and it does not serve any good purpose. The record already shows that the prices go up and down, and the supply is copious at one time and not so much at another time. The question does not specify a time. If he will get down to a period so we can verify it and check up the witness's statement, we may have something that is useful.

The Master: Mr. Higgins is testifying as of 30687
this date.

Mr. O'Brien: He does not compare it with any other period.

The Master: Mr. Higgins in substance says that at this time, now, there is a very large demand for various articles coming from crude oil, which reduces the quantity of gas oil.

Mr. O'Brien: Very largely increased supply, too.

The Master: That is another matter that has got to come of course.

Mr. O'Brien: Not only that, but the export during the war has stopped.

The Master: If Judge Ransom does not touch on that subject, you gentlemen will, and if you don't I will.

Q. Do you know, for example, in the matter of the use of gasolene, the use of gasolene has increased as much as seven times during the past ten years?

A. Yes, sir.

Mr. Chambers: Same objection.

Q. Has there likewise been a great increase in the
30689 last few years in the use of fuel oil for ships?

Mr. O'Brien: Objected to as absolutely futile in this case, it does not serve any purpose to say that the use has increased in a number of years. That generalization isn't going to serve any purpose. We have to have some precision here, or something definite about it to be of any use to anybody.

The Master: Objection overruled.

Q. Both by the United States Shipping Board and by the United States Navy and other navies?

A. Yes, sir.

Q. Do you know whether it is true that the pro-
30690 gram of the Shipping Board involves the use of fuel oil to the extent of about one-half of the entire domestic output of the United States?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, not proper cross.

The Master: I will let the witness state.

A. I have read of such things.

The Master: What?

The Witness: I have read of such things.

Mr. Chambers: I move to strike that out as hearsay.

The Witness: I will let the witness's statement stand, that all he knows about it is that he

has read of such things. He does not know about it himself.

Q. But you do know there has been a very large increase in the use of fuel oil by the Shipping Board and by the American Navy?

A. I do.

Q. Are you having great difficulty at the present time in obtaining gas oil for your present commitments?

A. Yes, sir, I am.

Q. From what fields are you obtaining your gas oil? 30692

A. Well, the crude oil comes from the various fields in the United States, Pennsylvania, Ohio, Indiana, Oklahoma and Texas.

Q. At the present time are you even having to draw upon the California fields?

A. That is very true.

Q. To fulfill your present contracts?

A. Very true.

Q. That means bringing oil by ship cargoes from the Pacific coast through the Canal?

A. That is true.

Q. And how much does that add per gallon to the cost of transportation? 30693

A. Well, it depends on what arrangement you can make for freight.

Q. What would be the ranges?

A. Possibly three cents a gallon at the present time would cover the cost, or three and a quarter.

RE-DIRECT EXAMINATION BY MR. CHAMBERS:

Q. I show you a contract which I did not have before, between your company and the Bronx Gas & Electric Company. Is that your signature at the bottom?

A. Yes, sir.

Mr. Chambers: I offer that contract dated July 23rd, 1908, between the Bronx Gas & Electric Company and the Standard Oil Company of New York, being Defendants' Exhibit AA50 for identification, and I ask to strike out the words for identification and have it received in evidence.

The Master: Yes, received in evidence as Exhibit AA50 in evidence.

Mr. Chambers: I will state on the record it
30695 being the same as AA89 for identification.

The Master: Which was a copy?

Mr. Chambers: Yes. We marked the copy for identification.

Q. Mr. Higgins, is there any market price for oil?

A. The market is what you can sell the oil for.

Q. There is no recognized well defined market price among the oil companies for oil?

A. For this product that you are speaking of, gas oil?

Q. Yes, gas oil?

A. I do not think so.

Q. You fix the price?

30696 A. No.

Q. For your oil, I mean your company does?

A. Yes, sir.

Q. That is, you determine what you will sell it for?

A. Yes.

Q. And they have to pay that, or they don't get any oil?

A. Yes, sir.

Q. And is that generally true right along for several years?

A. Yes, sir.

Q. You do not pay any attention to what other companies charge, do you, or do you?

A. No, sir.

Q. And has the supply of gas oil increased in the last few years over what it was before that?

A. Oh, yes.

Q. And a great deal of it comes from Mexico, doesn't it, imported into the United States?

A. No, sir.

Q. No oil of any kind comes from Mexico?

A. Oh, yes.

Q. Some oil comes from Mexico? 30698

A. Yes.

Q. It is imported in?

A. Yes.

Q. Is there any coming in from Roumania now?

A. No.

Q. But you have heard that your company bought up some oil in Roumania, haven't you?

A. No, sir.

Q. Haven't you read that in the papers, the Standard Oil Company purchased large quantities of oil in Roumania?

A. I may have read something of that kind, but my company does not produce anything in Roumania. 30699

Q. How do you fix the price of oil?

The Master: Gas oil you mean?

Q. Gas oil. When you sit down and make these gas companies pay you so much a gallon, what process do you go through?

A. Well, it depends on the crude markets and the supply and demand of the gas oil.

Q. You always figure for a nice little margin for the Standard Oil Company, don't you?

A. No, sir.

Q. You do not figure any margin?

A. Sometimes we lose money.

Q. And sometimes you make money?

A. Very little on any given product or quantity we sell.

Q. You do not figure on losing any money, generally, do you, in selling your gas oil?

A. No, we could not exist if we did that.

Q. You figure on making something?

A. A little, yes.

Q. And can you tell us the operation of the Stand-
30701 ard Oil's mind, if it were a person, how it goes about to determine how much it will charge for oil?

A. Well, on this product that you have under discussion here, if they made one-eighth of a cent a gallon profit, they would consider they were doing very well.

Q. One-eighth of a cent net, you mean?

A. Yes.

Q. Well, you make more than that sometimes, don't you?

A. Well, yes, we have.

Q. And you sell to the Standard Oil in very large quantities?

30702 A. Sell to whom?

Q. Or to the Consolidated Gas Company?

A. No, sir.

Q. You do not sell any gas oil to the Consolidated Gas Company?

A. I have not sold any gas oil to the Consolidated Gas Company since 1911, if my memory serves me.

Q. It is the New Jersey corporation, is it, that sells to them?

A. I believe so.

Q. You haven't anything to do with the New Jersey corporation?

A. I have not.

Q. Yours is the New York Standard Oil, the Standard Oil Company of New York?

A. Yes.

Q. And they are not related, are they, in any way —your company, with the New Jersey company?

A. What do you mean by that?

Q. I mean by that, do they interchange their oil?

A. Oh, yes.

Q. And if you cannot fill a contract, the Standard Oil of New Jersey fills it? 30704

A. Not any.

Q. They take care of their own?

A. They do, I suppose.

Q. You get your oil, crude oil, from the same sources of supply, I take it?

A. Well, yes.

Q. Do you buy your oil from the Standard Oil of New Jersey?

A. Sometimes.

Q. On the books, I mean?

A. Sometimes we do.

Q. And sometimes you don't. Are you a producing company? Do you have any oil wells or any well fields, or do you buy the crude oil wherever you can get it? 30705

A. Why, I should say that we are not a producing company.

Q. Whom do you buy your crude oil from mostly?

A. We buy it of the various pipe lines, various companies in the south that produce it.

Q. Do you buy any from the Mexican Petroleum Company, say?

A. I think we do. Not gas oil, however.

Q. Gas oil?

A. No.

Q. No gas oil?

A. No.

The Master: You do not buy gas oil from anybody, do you?

The Witness: Oh, yes.

The Master: Oh, do you?

The Witness: Yes, sir.

The Master: I thought you did all your own

30707 refining?

The Witness: No, sir.

Q. You buy it and then sell it?

A. Yes, sir.

Q. And you make, I suppose, a middleman's profit?

A. Yes, sir, we make a profit on the large volume of business that we do, but a very small profit on any one individual transaction.

Q. What is your storage capacity, the Standard Oil Company of New York?

A. What do you mean by storage capacity?

Q. In this territory. How many gallons of oil can you store?

30708 The Master: Do you mean gas oil?

Q. Gas oil, in this locality?

Q. Well, we have a refining capacity in this locality for possibly 18,000 to 20,000 barrels of crude a day.

Q. You do not run in competition with the Standard Oil Company of New Jersey, do you?

A. Very greatly.

Q. You do?

A. Yes, sir.

Q. Do you quote prices lower than they do, sometimes?

A. I presume we do once in a while.

Q. That is, you do not consult them on prices?

A. No, sir.

Q. You act independently of them?

A. We do.

Q. The Standard Oil Company of New Jersey does not sell any gas oil to any companies in New York or New Jersey?

A. I presume they do.

Q. And do they sell—does the Standard Oil Company of New Jersey sell any company outside of the Consolidated Gas Company, that you know of?

A. I could not answer that. 30710

Q. In New York or New Jersey?

A. I cannot answer that.

Q. Now, the oil that was specified in these contracts which the defendants offered in evidence, were those contracts lived up to and the oil delivered?

A. We never defaulted on a contract in our lives.

Q. So they were all carried out?

A. Yes, sir.

Q. At those prices?

A. Substantially so.

Q. Unless there was some rebates sometime, or some deductions for sediment?

A. There might possibly have been some certain in- 30711
stances of that kind.

Q. Or some deductions sometimes because the gas oil was not entirely up to the standard?

A. I do not recall any instance of that kind.

Q. Do you recall there was one instance with the Kings County Lighting Company, where that situation confronted you in which they claimed the gas oil was not up to the standard prescribed in the contract, and some adjustment was made?

A. I think so, but it was on account of water or foreign matter in the oil, as I recall it.

Q. And you recall, don't you, that some such situation confronted you in regard to the Brooklyn Union, some complaint made and some adjustment between the Brooklyn Union and your company?

A. Possibly there was away back years ago. I do not recall the details of it, however.

Q. How was the specific gravity of your oil, generally, above 26?

A. Well, we sell 24 to 32 and 28 to 34 gravity, an average of about 32, or an average of about 30 gravity. The gravity has very little to do with the value
30713 of the oil as a gas making product.

Q. Well, do you mean that as low, as, say, 24 gravity would be just as good for gas making purposes, as, say, 30?

The Master: He did not say that at all. He said he has to charge just as much for 24 as for 32.

Q. Is that what you mean?

A. What you want to know is the average gravity, do you?

Q. Yes.

A. Well, the average possibly on 28 to 34 is very close to 30.

30714 Q. Do you know anything about whether 24 degrees is as good as 30 degrees in making gas?

A. Well, that would depend entirely upon the operator of the machine, whether he got the value out of it. It is just as good, yes.

Q. You think so?

A. Why, yes.

Q. How about as low—did you ever have any as low as 20? Is there any such oil as that?

A. We have never sold any as low as 20, but we may have to.

30715

Q. Then it is your idea that 24, if the operator is competent, will turn out and make just as good gas as 30, say?

Mr. Ransom: I object to the question as incompetent.

The Master: I will allow it.

Mr. Ransom: The witness's qualifications in gas making are not shown. It depends entirely upon what the candle power situation is in the district.

The Master: He made the statement without objection, and I will let him answer now.

30716

Mr. Chambers: Exception.

The Witness: Read the question.

(The question was read by the stenographer.)

The Witness: If the oil is properly manufactured, yes.

Q. Now, these contracts, if the price of gas oil goes down in these pending contracts, the one that Mr. Ransom, counsel for the complainant, has offered in evidence, you remember they offered a number of contracts from 1916 to 1919. Now, if the price of crude oil or oil goes down, there is a clause there, or a leeway, so that you reduce the price to the company?

30717

A. No, sir.

Q. You are going to hold them right to those prices? Supposing there is a drop, a severe drop, in the price of oil, isn't it the practice of your company to make some adjustments with the gas companies?

A. No, sir.

Q. You do not intend to do that? You have done that in the past, haven't you?

A. No, I do not recall any instance where we have.

Q. Allow, say, a cancellation of the contract and making of a new one?

A. There might have been such circumstance, but I do not recall it.

Q. Say with the Brooklyn Union Company, in the past?

A. No, sir.

Q. The price of gas oil is more or less uncertain at the present time you said?

A. Yes, sir.

The Master: What do you mean, do you ex-
30719 pect it to go down?

The Witness: No.

Mr. Chambers: I did not ask him that.

Q. You don't know what it will do, do you, for sure?

A. Well, I could gamble on it and win, I think.

Q. Yes, you can gamble?

A. Yes.

Q. You testified in the Kings County case, didn't you, in substance, that if the price of gas oil suddenly dropped, you made some adjustment with that company?

Mr. Ransom: I object to the question as in-
30720 competent.

The Master: Overruled. I will let Mr. Higgins state.

A. I possibly did, yes.

Q. And you said something—you did make some adjustment with the Brooklyn Union Gas I think some time or other during 1916?

A. My memory—I cannot recall anything of that sort.

Q. But you would not say that you did not?

A. No, I do not think we ever did anything of that kind.

Q. You recall, do you, in 1914, that there was an overproduction of oil?

A. There might have been a surplus of it in that year.

Q. And that the price of oil dropped suddenly?

A. I think so.

Q. And you would not have had any hesitancy, would you, about making a five-year contract then?

A. Most decidedly.

Q. You did not care for long term contracts?

A. No, sir.

Q. On the part of the oil company? 30722

A. No, sir.

Q. Do you remember this testimony that you gave before the Public Service Commission?

Mr. Ransom: I object to the question.

The Witness: I remember that I was examined.

Q. (Reading.) "Q. Will you please explain why your company was willing to surrender a contract calling for gas oil at five cents a gallon and accept a contract at three cents?

A. We thought it was good business to do so.

"Q. I suppose it was. What was the consideration? 30723

"A. We would have sold the supply of oil to the Brooklyn Union Gas Company at approximately 2.5 cents, but they gave up the oil that was due under the contract at 5 cents and we struck an average price for the new contract. That is the price that was satisfactory to them and to ourselves.

"Q. Do you remember that?

"A. Yes."

Q. Now, do you recall that testimony?

A. I do recall that I offered that testimony.

30724 C. M. Higgins, Re-cross.

Q. "Q. Now, that striking of the agreement which was satisfactory to both of you, dated June 30, 1914, with the Brooklyn Union Gas Company for 171,000,000 gallons at 3.0345 cents is shown by your Exhibit 265 for identification. Now, with reference to the contract of the plaintiff, which is Exhibit 7 in this case, and which is dated January 19, 1914, have you that contract in mind?

"A. I see this."

Do you remember that testimony?

A. Yes.

30725 Mr. Ransom: I object to reading from the record in this case, the Kings County Lighting case. It is wholly incompetent, and not in any way probative against this plaintiff. This plaintiff has no contractual relations with the company represented by this witness, we have not bought oil from them for years, and we did not produce Mr. Higgins upon the stand. They have produced him and sponsored him, and the reading of his testimony in other cases is incompetent, and I move to strike it out.

The Master: Motion denied.

Mr. Ransom: Exception.

30726 Re-cross examination by Mr. Ransom:

Q. Mr. Higgins, has the supply of gas oil kept up with the increased demands for gas oil?

A. Not at all.

Q. Not nearly.

A. No, sir.

Q. Do you buy most of your crude oil?

Mr. O'Brien: Your Honor, I am objecting to this line of testimony.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. Yes, sir.

30727

Q. Do you buy most of your crude oil in the field, from pipe lines and producing companies and the like?

A. Yes, sir.

Q. Do you see any prospect of a drop in the price of crude oil?

Mr. O'Brien: Same objection, your Honor.

The Master: Same ruling.

Mr. O'Brien: Exception.

Mr. Chambers: I object to it on the ground that is only a guess.

A. I think it will be higher in price.

30728

Q. And do you see any prospect of a decrease in the price of gas oil at the present time?

A. I do not.

By the Master:

Q. Did I get the impression that even though crude oil stayed at its present level, you do not expect any drop in the price. Even though crude oil might drop a little bit, you do not expect any drop in gas oil?

A. It is the question of supply and demand. These gas companies are using ten to fifteen per cent more this year than they did last year.

30729

Q. What made me ask you was the answer to two questions which were put there in rather different form, and your very positive statement about the gas oil price not coming down, and you said "I do not think there will be any drop in crude," and I got the impression that there was some reason in your mind that led you to say more positively that there would not be any drop in gas oil even though there might be some drop in crude.

A. I think that is probably true.

Q. Why is that?

A. Because the gas oil is turned into products that bring a higher price in the market.

By Mr. Ransom:

Q. So that as a merchandising proposition, it is more profitable to refine gas oil into these various products which you have mentioned, and sell those at present market prices than to sell gas oil at the present prices?

A. Precisely so.

Q. And you anticipate that condition will continue?

A. I see no reason why it should change.

Q. And the present trend of prices will make it even worse?

30731 A. That would be my judgment.

Q. Do you know about what is the total quantity of gas oil used in this country? Is it about 30,000,000?

A. Yes, sir, 30,000,000 barrels.

Q. A year?

A. Yes, sir.

Mr. O'Brien: I move to strike out the question and answer. The witness is not qualified on that. It is a matter of statistical work involving all the companies of the country. You don't collate that, do you?

The Witness: Why, of course, I do.

Mr. O'Brien: Of course you do?

30732 The Witness: Why, yes, certainly.

The Master: That means about 42 gallons to a barrel, does it?

The Witness: Well, 50 gallons will be safe.

The Master: If I were in Mr. Higgins' position I would know pretty nearly what the consumption was.

Mr. O'Brien: Your memory wasn't very positive on that a few minutes ago, was it?

The Master: You cannot interrupt the cross-examination in that way.

Q. Mr. Higgins, you are not a practical gas man, are you?

A. Well, not in the sense that I am an engineer.

Q. You have never made gas for sale, for commercial purposes?

A. Oh, yes.

Q. Connected with gas manufacturing companies?

A. Yes; that was my early education, sir.

Q. Operating of gas plants?

A. Yes, sir.

Q. Until this year, have you sold oil as low as 24 degrees 30734

A. As low as 24?

Q. Yes, in this territory?

A. This year?

Q. Before this year?

A. No, I do not think so.

Q. And this year you are providing for 24?

A. Well, the range is 24 to 32, yes.

Q. But in this year's contracts for the first time you have a right to deliver oil as low as 24 degrees Beaume?

A. Well, I think the buyer could ask for the average.

Q. But the contracts provide for as low as 24? 30735

Mr. O'Brien: The contracts speak for themselves and they are in.

The Master: Overruled.

Mr. O'Brien: Exception.

A. Yes.

Q. And you anticipate difficulties in the future in delivering higher than 20?

Mr. Chambers: I object to that.

The Master: That is what he said in answer to that question.

Mr. Chambers: Higher than 20?

The Master: Yes, he said that in answer to that question. You were not listening.

Mr. Chambers: Did you say that?

The Witness: No, sir.

Q. What did you say about 20?

A. Let us refer to the notes and see.

The Master: Didn't you say in answer to Mr. Chambers that you were down as low as 24, and that you expected to get down as low as 20?

The Witness: No, I do not remember that I

30737 said that. I said they will get a good deal lower than 20, before we get through.

The Master: Let us get back to the testimony and get the facts.

Mr. O'Brien: You have got to take what you get.

The Witness: Yes, sir.

Q. Where and when did you ever operate a gas plant?

A. Well, I commenced the sale of gas making—

Q. What?

A. I started in at the sale of gas making material along in about 1880.

30738 Q. Where or when were you connected with the operations of a gas plant?

A. As introducing the product, I was connected with it.

Q. That is, introducing gas?

A. Introducing the products that were used in the manufacture of gas.

The Master: I understood you to say that you actually operated or had something to do with operating a gas plant?

The Witness: I had.

30739

The Master: Where?

The Witness: Detroit, Michigan.

Q. When?

A. Back in about 1880?

Q. Have you had anything to do, have you operated a gas plant or made gas for sale for commercial purposes since that time?

A. No, sir.

Q. Have you ever made gas from gas oil?

A. Yes, sir.

Q. At that time?

A. No, sir; we did not use it at that time.

30740

Q. When have you ever made gas from gas oil?

A. Why, I have stood around and watched them make it and did what I could to help them get the results with the oil.

Q. That is in connection with the sale of apparatus?

A. The sale of gas oil.

Q. But aside from what you have done standing around and watching gas machines work, during the time you were selling gas oil you have never had any—

Mr. O'Brien: Just a minute, Mr. Higgins. I object to the question.

30741

Mr. Ransom: Let me finish the question.

Mr. O'Brien: Well, you had finished it.

Mr. Ransom: I had not.

Mr. O'Brien: You had. I object to the question as argumentative.

The Master: I guess we will have to take a recess until two o'clock.

Mr. Ransom: I have only two questions more of Mr. Higgins.

The Master: Do you want to finish before two o'clock, Mr. O'Brien?

Mr. O'Brien: I want the case complete, your Honor.

The Master: Proceed.

Q. Well, since 1880, have you had any responsibility for making gas?

A. Not at all.

Q. Have you ever made any gas, at any place, from gas oil?

Mr. O'Brien: He has answered that. I object to it, your Honor, as merely a repetition. He has answered that on the record.

30743 The Master: I will allow this one question. I think Mr. O'Brien is right, that he did answer it, but I will let him answer it again.

A. Well, as a merchant selling his product I have been interested in the results they have obtained, from the different products.

Q. Have you ever had responsibility for making gas from gas oil?

A. No.

Mr. O'Brien: Just a minute, Mr. Higgins. I object to it, your Honor, as a repetition of a question he just asked awhile ago.

The Master: Objection overruled.

30744 Mr. O'Brien: Exception.

Q. Have you ever made gas under 22 candle power?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial,

The Master: Under what?

Mr. Ransom: Under 22 candle power, the statutory requirement.

A. I never have.

Mr. Ransom: I think that is all.

By the Master:

Q. Do I understand your testimony correctly, Mr. Higgins, that in 1880 or thereabouts you were actually connected with some gas works in producing gas?

A. No, sir; you do not understand me correctly.

Q. What was this connection that you had?

A. I went out to see the experimental work carried on with the change in the products they were introducing at that time.

Q. So that at no time were you officially connected with a Gas Company that was actually working in the production of gas? 30746

A. No, sir.

The Master: Anything else, Mr. O'Brien?

Mr. Ransom: I think I will move to strike out his statement that 24 or lower was as good.

The Master: No, I will let it stand in the light of the explanation made.

RE-DIRECT EXAMINATION BY MR. O'BRIEN:

Q. Mr. Higgins, during what period did you have this intimate connection with the use of gas oil in the production of gas, where you went from plant to plant and saw it?

Mr. Ransom: Objected to. It does not appear that he had any connection with the use; he was there to sell. Now, of course, he wants to sell twenty-four gravity. 30747

The Master: He is a merchant.

Mr. Chambers: I do not think that is quite a competent statement.

The Master: I will let Mr. Higgins state the years that he watched these gas operations he has testified to.

Mr. O'Brien: The range, I mean, since you went into the business?

A. I went out with the first carload of material that was ever shipped for the purpose, and saw it in operation.

The Master: When was that, about 1880?

The Witness: Yes.

Q. Many years afterwards you watched its operation and saw the results?

A. I have watched it right along.

Q. And consulted with and conferred with gas companies and their superintendents and officers?

A. Yes.

30749 Q. As to the results?

A. Yes.

Q. And discussed with them the actual results they were able to obtain from the products of your company?

A. Yes, sir.

By the Master:

Q. I suppose, Mr. Higgins, that the more you take out of the gas oil, the lower the gravity that remains?

A. Oh, yes.

Q. So that the more you can get the lower you can sell your gas oil at—the lower the gravity the better the result financially to your company, by getting out

30750 the naphtha and other things before you sell the gas oil; is that right?

A. From that product which is left after the use of the gas oil we derive these various products I spoke of. Those are used for fuel purposes.

Q. What I am getting at is this—

The Master: Well, I have covered it, I think.

Mr. O'Brien: I think so.

Mr. Chambers: I just want to ask him one question.

By Mr. Chambers:

Q. In obtaining results from the use of gas oil in a gas machine, from your study of it, it depends largely on the ability of the operator, does it not?

(Witness nods head.)

Mr. Ransom: Objected to.

The Master: That we have had; that is simply repetition.

Mr. Chambers: Well, he said yes; why not let him state it?

Mr. Ransom: He has not said yes.

The Master: He said yes before to that question. 30752

Mr. Chambers: Yes, he did; he nodded.

The Master: Well, I will let it on the record, then.

Mr. Ransom: I just want to ask one question.

RE-CROSS EXAMINATION BY MR. RANSOM:

Q. Mr. Higgins, have you ever seen gas of more than 22 candle power made with gas oil of less than 28 gravity?

Mr. O'Brien: I object to it as incompetent, irrelevant and immaterial.

The Master: No, I will allow it.

Mr. O'Brien: Exception. 30753

A. Have I ever seen it?

Q. Yes, or ever had anything to do with the making of it?

A. No, but I think it is possible to make it.

Q. But you have never done it or seen it done?

A. No, sir.

Mr. Chambers: Did you say you thought it was possible?

The Witness: I do, yes.

The Master: How much cheaper is 24 gravity oil than 30?

The Witness: No cheaper.

The Master: Then what are we fussing about, if the cost is the same? What are we wasting time about? Mr. Higgins says it costs precisely the same whether it is 24 or 30.

Mr. Ransom: That is not the testimony so far in the case.

The Master: What?

Mr. Ransom: That is not the testimony of Mr. Lyon. The defendants produce witnesses who do not agree.

30755 The Master: Are you through with Mr. Higgins?

Mr. Ransom: I am.

Mr. Chambers: I am through.

Recess.

Afternoon session.

J. A. PEARSON recalled:

DIRECT-EXAMINATION BY MR. CHAMBERS:

30756 Q. Mr. Pearson, you were on the stand the other day?

A. Yes, sir.

Q. You are the purchasing agent of the Public Service Gas Company, you said?

A. I didn't say it, but I am.

Q. How long have you been the purchasing agent?

A. Since 1903.

Q. I show you a paper dated June 3, 1910. Is that your signature?

A. It is.

Q. Do you know Mr. Nutty's signature?

A. Yes.

Q. Is that his signature?

A. Yes.

Q. I show you another paper dated June 1, 1910, marked Defendants' Exhibit AA59. Is that your signature?

A. Yes, sir.

Q. And is that Mr. Nutty's signature?

A. Yes, sir.

Mr. Chambers: I offer the first paper in evidence, being contract dated June 3, 1910. 30758

Mr. Ransom: It is already in evidence over my objection and exception.

Mr. Chambers: All right. I offered it, but I did not prove these signatures. The same applies to Defendants' Exhibit AA59.

Mr. Ransom: That is also in evidence.

Q. I show you another paper, Mr. Pearson, bearing date May 25, 1913, and ask you if that is your signature at the end there?

A. Yes, sir.

Q. And Mr. Nutty's signature?

A. Yes.

Mr. Chambers: I offer this paper in evidence, being contract dated May 25, 1913, between the Gulf Refining Company and the Public Service Gas Company of New Jersey. Oh, this appears to have been Defendants' Exhibit AA60, so I won't have it marked again. 30759

Q. I show you Defendants' Exhibit AA61. Is that your signature there?

A. Yes, sir.

Q. I show you Defendants' Exhibit AA62. Is that your signature at the end?

A. Yes.

Q. And Mr. Nutty's signature?

A. Yes.

The Master: What is the idea of this?

Mr. Chambers: I didn't approve his signature before.

The Master: I don't think you would have gotten it in if there was not some proof of signature.

Mr. Chambers: My recollection is—

The Master: Go ahead and show him all these exhibits, get them together.

30761 Q. I show you Defendants' Exhibit AA64, Defendants' Exhibit AA65, and Defendants' Exhibit AA63, and ask you if that is your signature at the end of each one of those?

A. Yes, sir.

Q. And Defendants' Exhibit AA66?

A. Yes, sir.

Q. And Defendants' Exhibit AA67?

A. Yes, sir.

Q. And Defendants' Exhibit AA68?

A. Yes, sir.

Q. And Defendants' Exhibit AA69?

A. Yes, sir; those are all correct.

30762 Q. And Defendants' Exhibit AA70?

A. Yes, sir.

Q. I show you Defendants' Exhibit AA62. That covers as it states in the third paragraph, from August 1, 1914, to July 31, 1919, a five-year contract?

A. Yes, sir.

Q. Were all these contracts carried out?

A. They were.

Q. And the oil was delivered?

A. All with the exception of my testimony the other day where I spoke of the Navy having—

Q. You considered though that they had complied with their contract in spite of that?

A. Yes, sir.

Q. Take this five-year contract that I have just shown you, Defendants' Exhibit AA62—at the time you made that contract for five years did you receive bids from other companies, do you recall?

A. My recollection is that we did, yes.

Q. Do you remember what companies?

A. I think we had a bid from the Atlantic Refining Company of Philadelphia—is this the Philadelphia contract? 30764

Q. No, the Public Service Gas Company.

A. Then I am mistaken. I think we had a bid from the Standard Oil Company of New Jersey.

Q. For a five-year contract?

A. No, one year.

Q. Were there any five-year bids?

A. No, no five-year bids at all. The Standard Oil Company doesn't like five-year contracts very much.

Q. You didn't have any trouble in making this with the Gulf Refining Company for five years, did you?

A. Well, we induced them to make it for five years, put it that way.

Q. They were willing to? 30765

A. They were willing to.

Q. Do you remember how much was the bid of the Gulf Refining Company lower than the other bidders—do you remember, or were they about the same?

A. I don't remember, Mr. Chambers. It is too far back, it is five years ago. I assume that the Gulf Refining Company made the best bid, however, because we gave them the business.

The Master: Either in price or in the period for which it was to run?

The Witness: It was the best bid we had.

The Master: Another bid might be at a better price, but for one year, and this might be the more advantageous proposition?

The Witness: Yes, sir.

Q. Do you know the directors of the U. G. I.?

Mr. Ransom: Objected to as incompetent and immaterial and not bearing on this case.

The Master: Objection sustained.

Q. Did you have a five year contract for the Equitable, too?

30767 A. Yes.

Q. Covering about the same period?

A. Yes, about the same period.

Q. That is in evidence here?

A. Yes, about the same: the dates are a little different.

Q. Did you have other bids besides the bids of the Gulf Refining Company?

A. My recollection is that these contracts were all made about the same time for both companies.

Q. Do you recall whether you had other bids?

A. I think we had.

Q. Five year contract bids?

30768 A. No, we only had the one five-year contract bid.

Mr. Chambers: That is all.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Pearson, when you say that the five-year contracts between the Gulf Refining Company and the Equitable of Philadelphia, made in 1913, were carried out on the part of the Gulf Refining Company—

A. That was 1914, I think: 1914 to 1919.

Q. Yes, that is right. You don't mean to say that the Gulf Refining Company delivered the contract quantity of oil in each of those years, do you?

A. They did not deliver it during part of the war period.

Q. That is during part of 1917 or 1918?

A. Yes.

Q. Can you say whether the shortage in the contract quantity, the part not delivered, amounted to approximately 25,000,000 gallons?

A. My recollection is that that amount included both the Equitable and the Public Service Company. The same thing affected both companies, that is, the navy.

Q. That is, they failed to deliver in about the same 30770
proportion under each contract, that with the Public Service Company and that with the Equitable Company?

A. The amount that was not delivered on the Public Service contract was a little less than it was on the Philadelphia contracts, due to the fact that the Philadelphia Company used more oil.

Q. The two contracts for Philadelphia were for 125,000,000 gallons each?

A. Yes, sir.

Q. In the five years?

A. Yes, sir.

Q. And not more than 50,000,000 gallons was to be 30771
delivered in any one year?

A. Yes.

Q. Are you able to state whether or not they did deliver during the five years more than 225,323,000 gallons?

A. No, they didn't deliver that much.

Q. Did they deliver 225,000,000 gallons?

A. That is about right, I think.

The Master: What were the two together?

Mr. Ransom: 250,000,000 gallons.

The Witness: I think they delivered within 25,000,000 gallons of the full amount on the two contracts for Philadelphia.

Q. For the two Philadelphia contracts?

A. Yes, sir.

Q. And the percentage of nondelivery, was about the same on the Public Service contract?

A. No, the Public Service Company used less, and that was due to the fact that the Public Service Company during the five years made a contract for some gas, and they did not need as much oil.

30773 Q. During this period of nondelivery by the Gulf Refining Company you had to go into the open market and buy oil?

A. Yes.

Q. Did you have to pay prices around eight and nine cents per gallon for it?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, about.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. The prices were between 6 1/2 cents and 9 1/2 cents.

Q. You bought from a number of companies at

30774 prices of 8 cents and higher?

A. Between 6 1/2 and 9 1/2 cents.

The Master: Was the greater percentage of this merchandise that you bought in the open market delivered at 6 1/2 cents, or nearer to 9 1/2 cents?

The Witness: It was nearer to 9 1/2 cents.

The Master: Most of it ran much higher?

The Witness: Yes, sir.

Q. Well, would you say that the preponderant part of it was bought at prices nearer to nine cents than to six cents?

A. Yes, we got very little at 6 1/2 cents.

Q. And most of it was at 8.2 cents or higher?

A. Well, it went up in about one-half cent gradation, from 6 to 7 cents, then 7 1/2 cents, then 8 cents, then 8 1/2, and so on.

The Master: Would 8 cents be a fair average for all of it?

The Witness: I think so, I think 8 cents would be about the average figure.

Q. Now, referring to the contract dated October 20, 1919, for Philadelphia, and the one dated at about that time—I don't seem to have it before me—the 30776
other Philadelphia contract, is it or is it not a fact that these contracts were negotiated at the price agreed upon during the summer of 1919?

A. Yes, these contracts were arranged for in August, 1919, as was also the Public Service contracts.

Q. They were negotiated in the middle of the summer?

A. Yes, sir.

The Master: He said in August, 1919.

Q. And the representative of the Gulf Refining Company was abroad at that time, or away?

A. That was the reason we negotiated. He was going abroad, and he wanted to have them out of 30777
the way before he went. The Public Service contract expired on the 1st of August, and the other two expired, one on November 1st and one on December 1st. He didn't know how long he was going to be abroad, and he asked if we could not clear them up before he went away. That is the reason they were made so early.

Q. But they were not signed until later? A. The Public Service one was signed right away, and the one for the 25th Ward Works, which is not here, was signed before he went away, and the other one was signed when he came back.

Q. They were all negotiated for?

A. All arranged for, yes, sir.

Q. And the price was fixed at that time?

A. The price was fixed.

Q. Mr. Pearson, in the course of your duties as purchasing agent for the Philadelphia companies, and the Public Service Gas Company and other companies for whom you purchase oil, do you keep in touch with the conditions as to the supply of gas oil and the prices at which it can be obtained?

A. Yes.

30779 Q. Do you buy gas oil for any company in New York State?

A. Two.

Q. Which ones are they?

A. The Syracuse Lighting Company, and the Fulton County Gas & Electric Company.

By Mr. Chambers:

Q. Is that at Fulton, New York?

A. Gloversville.

By Mr. Ransom:

Q. Have you recently made any contracts for either of those companies?

A. I have, for the Fulton County Company.

30780 Q. How recently?

A. I think it was either last week or the week before.

Q. For 1920 delivery?

A. Yes.

Q. And for how long?

A. Three months in 1920.

Q. What was the price you were able to obtain?

Mr. Chambers: I object to that as incompetent. The contracts, if there is one, would be the best evidence, if it was competent.

The Master: I will let him state the price.

Mr. Chambers: Exception.

A. 9.26 cents.

Q. That the best price you were able to obtain?

A. Yes, sir.

Q. How recently did you make a contract for Syracuse?

A. That contract is still in force, and my recollection is that it was made about five months ago. I think it runs out at the end of this month.

Q. What was the price there? A. I don't recall exactly. It was somewhere around six and a half cents.

Q. Would you say that there has been within the last few years a depreciation in the quality of gas oil? 30782

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, and not cross-examination.

The Master: I will allow it.

Mr. Chambers: Exception.

A. A very great deterioration.

Q. So that you have to use more oil to accomplish the same result?

A. Yes.

Q. That has been your experience with the companies for which you buy? 30783

A. That is what our operating engineers tell me.

Mr. Chambers: I move to strike that out.

Mr. O'Brien: That is contrary to your own contentions. You have been contending that you could get out of a gas oil, and you have, certain quantities, a maximum of efficiency.

Mr. Ransom: We are talking about his gas oil now.

Mr. O'Brien: Well, he is not a gas engineer. He is only a sales agent, as I remember it, a sales manager, are you not, Mr. Pearson?

The Master: No, he is a purchasing agent.

The Witness: Purchasing agent.

Mr. O'Brien: Purchasing agent.

The Master: It is his business to find out what stuff is doing, in order to know what to buy.

Mr. O'Brien: I move to strike out the last three questions and answers, your Honor, on the ground the witness is not qualified as a gas engineer.

The Master: Motion denied.

30785 Mr. O'Brien: Exception.

Q. Have you found that there is a great shortage of gas oil at the present time?

A. Yes.

Q. And has been for some months?

A. Yes.

Q. And in your judgment, is that shortage likely to continue?

Mr. Chambers: I object to that as speculative, and the witness is not in the gas oil business.

The Master: Allowed. He has got to buy some gas oil.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial. Exception.

30786

The Witness: Will you read that question?

(The question was read by the stenographer.)

The Witness: In my judgment it is, yes.

The Master: Why haven't you been making contracts longer than for six months?

The Witness: We cannot make them.

The Master: You cannot get them?

The Witness: Cannot get the companies to make them for longer.

Q. Have you had some experien e within a few days or weeks with respect to obtaining oil to take

the place of oil that had not been delivered at your Philadelphia works?

Mr. Chambers: I object to that as being argumentative.

The Master: I will allow it.

A. Yes, we had some trouble getting oil last week, on account of the harbor strike in Philadelphia.

Q. And did you have to obtain oil from some other source at that time?

A. Yes.

Q. Were you able to buy oil?

A. Well, we did not buy oil. We had oil loaned 30788
to us.

Q. Could not buy it?

A. Did not want to sell it. May I explain this?

The Master: Yes.

The Witness: The Atlantic Refining Company in Philadelphia were the largest oil company there and we went to them and asked them if they would help us out, we had the steamer, the steamer was in the river but on account of this strike we could not get the oil up to the dock, and we asked them if they would help us out, and they said yes, they would let us have some oil but they wanted it returned, that they could 30789
not spare the gas oil, and that when we got our own supply in they expected us to return it. That oil has not been returned yet, but it will be.

Q. What was said about price, if anything? Was any price quoted you?

Mr. Chambers: I object to that.

The Master: I will sustain the objection. He said they did not want to sell it.

RE-DIRECT EXAMINATION BY MR. O'BRIEN:

Q. Mr. Pearson, is Mr. E. S. Stotesbury a director of your company?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. O'Brien: I want to show the connections between these companies.

The Master: I am not going to let you show them.

Mr. O'Brien: Well, I can bring Mr. Stotesbury here, it is only to save that much trouble.

30791 The Master: Objection sustained.

Mr. O'Brien: Isn't it possible for me to bring out from the witness the affiliations between the U. G. I. and other corporations that are affiliated with the Consolidated Gas Company?

The Master: No, I am not going into the ramifications of the Gas Companies all over the world.

Mr. O'Brien: No, but I want to bring out, your Honor, the connections between the U. G. I. and the complainant company. Your Honor refused to allow Mr. Carter to state what the holdings of J. P. Morgan were, J. P. Morgan

30792 & Co., in the complainant company, and I propose before we get through with the case to show the connections of all these men. This would save the trouble of bringing Mr. Stotesbury here.

The Master: You bring him here, if you think I am going to allow any such question. I won't allow it.

Mr. O'Brien: You will allow what appears to you to be material and competent and relevant.

The Master: Well, I can't for the life of me see the materiality of it.

30793

Mr. O'Brien: I can, your Honor.

The Master: That is where you and I disagree.

Q. Do any of the directors of your company own any stock in oil companies that sell gas oil?

Mr. Ransom: Objected to as irrelevant and immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception. On the ground that it is not specific, your Honor.

The Master: No, on the ground it has nothing to do with this case. I am not going to al- 30794
low it.

Mr. O'Brien: You can only prove one link in a chain at one time, your Honor, and I promise to connect it and you can strike it out afterwards if it is not connected.

The Master: If the chain as a whole is irrelevant, I will not permit any links.

Mr. O'Brien: But you can strike it out. We haven't any jury here except the representatives of the octopus who sit here in these chairs, and you can readily strike it out afterwards. There isn't any harm done, and I will have it in the record if later on, in view of the record at that 30795
time, you find it is material.

The Master: I won't take it.

Mr. O'Brien: Exception. I propose at this time, I will state as a matter of record, to show the connections between the U. G. I. and the oil companies and the Consolidated Gas Company and the National City Bank and J. P. Morgan & Co.

Mr. Ransom: Preposterous.

Mr. O'Brien: I take an exception to your Honor's ruling declaring that it is inadmissible on any ground.

By Mr. Chambers:

Q. Mr. Pearson, do you happen to know J. L. Richards, president of the Boston Consolidated Gas Company?

A. No, sir.

Q. You don't know his signature, then?

A. No, sir.

(Witness excused.)

30797 JAMES H. JOURDAN, called as a witness in behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

The Master: Your address?

The Witness: 39 Monroe Place, Brooklyn.

Q. You are president of the Brooklyn Union Gas Company?

A. I am.

Q. And have been for some time?

A. Yes, sir, for some years.

Q. I show you a letter written by Cullen & Dykman, they are counsel for the Brooklyn Union Gas Company?

30798

A. Yes, sir.

Q. Look at that letter, Mr. Jourdan, and tell me if what is in there with regard to oil contracts is true? That is, they purchased without a written contract. Will that refresh your recollection, and tell me about it, will you?

A. Yes. This was addressed to the Public Service Commission, as indicated here at that time.

Q. Now, state, will you, between what dates it was that you purchased oil without any contracts, and from whom, and the price?

A. I will have to refer to my notes for that.

Q. All right.

A. (Examining papers.) From 1904 down to date?

Q. Yes, the dates given in there?

A. I can take it off from this memorandum rather than the original. I have a brief summary of it here.

Q. All right.

A. We had a contract dated July 8, 1904, for supplies from July 1, 1904, to June 30, 1906.

Q. That was not a written contract?

A. That was a written contract. 30800

Q. Oh, that was a written contract?

A. Yes. It was at .0404 cents for one grade of oil and .04625 for another grade of oil, and then we received oil after the expiration of that contract, without a contract, that is, from July 1, 1906, to October 31, 1906, there was no contract.

Q. No contract. Now, that is the period I was really asking about. Now, did you buy oil, and from whom, during that period?

A. The Standard Oil Company of New York.

Q. How much did you pay per gallon?

A. The same prices as on the preceding contract, .0404 on one grade of oil and .04625 on another 30801 grade.

Q. Any other period, Mr. Jourdan when you did not have a contract?

A. Yes.

Q. State the period, will you, and the amounts you paid for that oil? The quality of the oil was the same covering this last period as specified in the contract which you mentioned?

A. Yes, 28 and 34, two grades of oil, part of one grade and part of another on those contracts which I have already mentioned.

The Master: You paid a little more for the 34 than for the 28?

The Witness: Yes.

Q. Now, the next period within which you purchased oil without a contract?

The Master: Then you had a period from January, 1908, to January 1, 1911?

The Witness: Without a contract from March 1, 1908, to December 31, 1910, no contract for that period.

Q. What price did you pay per gallon?

30803 A. For the 28 degree oil we paid three cents a gallon, and for the 34, 3 3/8 cents.

Q. And what gravity?

The Master: The same. He gave it, 28 at three cents and 34 at 3 3/8.

Q. That is all without contracts?

A. That is all. Then we had a contract from January 1, 1911—

The Master: That is all of that. He just wants the period without contracts.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Then Mr. Higgins did charge you a different price based on differences in the gravity Beaume?

30804 A. Yes, sir.

Q. Always has when there was a difference?

A. Yes, when we had different grades of oil supplied.

Q. That difference there was between 28 and 34 at that time?

A. Yes, 28 and 34.

RE-DIRECT EXAMINATION BY MR. CHAMBERS:

Q. Have you purchased for some subsidiary companies?

A. The subsidiary companies do not make any gas, they do not buy any oil. We manufacture all the gas used by them.

30805

Q. You do not buy any oil except for the Brooklyn Union?

A. Only the Brooklyn Union.

Q. Do they make gas which goes to the subsidiary companies?

A. We make all the gas that they sell.

The Master: You make all the gas that they sell?

The Witness: We make all the gas that they sell.

RE-CROSS EXAMINATION BY MR. RANSOM:

30806

Q. Did you try to get a 28-degree gravity minimum this year?

A. We did, yes.

Q. And could not get it?

A. No.

(Witness excused.)

RALPH ELSMAN, a witness called by the defendants, was sworn and testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

30807

Q. What company are you connected with, Mr. Elsman?

A. The Kings County Lighting Company.

Q. Do you know this signature on this Defendants' Exhibit AA57 (handing witness)?

A. No. I have seen the signature.

The Master: It is in evidence, is it not?

Mr. Ransom: It is in evidence.

By the Master:

Q. Whose signature is it, from the knowledge you have acquired since you have been with the company?

A. Why, Mr. Phillips.

Q. Who was he?

A. I think he was the secretary.

By Mr. Chambers:

Q. He signed as vice president there.

A. Well, then I don't know. I know the name.

By the Master:

Q. He was an officer?

A. He was an officer.

Q. You have not any doubt that that is his signature?

A. I have no doubt.

30809 By Mr. Chambers:

Q. You produced that from the files of your company?

A. I did; yes, sir.

Q. Under subpoena?

A. Yes, sir.

Mr. Chambers: I ask that Defendants' Exhibit AA57 be returned to the witness and this copy be marked in its place.

The Master: No, I will not do that. You will be using a lot of copies. That original is marked and that can be returned. You have a copy of it.

30810 Mr. Chambers: We took it away from Judge Greenbaum.

The Master: Then send it back to Judge Greenbaum. You have a copy of it.

Q. You made that copy?

A. No, I did not make that copy.

Mr. Chambers: They may take away the original; it is an exhibit in another case.

Q. I show you a contract here dated October 17, 1917. Do you recognize the signature for the Kings County Lighting Company (handing witness)?

A. Yes, by W. Flook, secretary.

Q. Is that his signature?

A. Yes.

Q. Did you produce this?

A. Yes, I believe I did. I do not know whether I produced that copy; I think the Texas Company produced it. I produced one, too, and then you handed it back to me.

Mr. Chambers: I offer that in evidence, the contract dated October 17, 1916, between the Kings County Lighting Company and the Texas Company.

Mr. Ransom: Same objection. 30812

The Master: Same ruling. It will be received.

Marked Defendants' Exhibit AA111.

Q. Did you produce the original of this paper dated October 18, 1907? Have you that?

A. Why, I gave you all that I had. I do not recall it. I have the contracts with me.

Q. Here are copies of two contracts, one dated October 5, 1906, between the Gulf Refining Company and the Kings County Lighting Company. There is the stamp of the Public Service Commission. Do you recall whether you produced the original of that and, if so, have you got it?

Mr. Ransom: I object. It does not bear the stamp of the Public Service Commission; it bears the stamp of a reporter who marks the exhibits in cases before the Public Service Commission. 30813

The Master: It bears the following stamp: "N. Y. Public Service Commission, First District, Order No. (blank), Case No. 651, Commission's Exhibit No. 9, Date 1-7-16." You can call it anything you please.

Q. (Continued.) We do not find the originals of these two papers. Do you recall whether you had them or not?

30814 Ralph Elsman, Direct.

A. I cannot say offhand. I had certain contracts with me here.

Q. Have you any that you have not turned over to us?

A. I gave you all that I had this morning and I thought you picked out what you wanted.

Q. No, I did not. I think perhaps you have it.

A. May I leave the stand?

The Master: Yes. What is it you want, Mr. Chambers? Give us the dates.

30815 Mr. Chambers: I want the original contract dated October 5, 1906, between the Gulf Refining Company and the Kings County Lighting Company.

The Witness: Here is one dated October, 1906. That is a copy (handing counsel).

Mr. Ransom: Are you reasonably sure this is a correct copy?

The Witness: I don't know; it was negotiated before my time.

The Master: What other contract did you want?

Mr. Chambers: October 5, 1906.

The Master: And what else?

30816 Mr. Chambers: Between the Texas Company and the Kings County Lighting Company, October 18, 1907.

Q. You have not then got the original of these two contracts?

A. What are those dates?

Q. October 5, 1906, between the Gulf Refining Company and the Kings County Lighting Company.

A. For what period?

Q. A year from January 1, 1907.

A. No.

Q. You do not know whether that copy you have is a true copy, do you?

A. I do not know.

Q. Then you have not got the original of the contract dated October 18, 1907, between the Texas Company and your company?

A. Here is one of October 18, 1907 (handing counsel).

Q. Do you recognize the signature of Mr. Flook?

A. Yes, sir.

Q. And that is the original contract?

A. Yes, I presume that it is. 30818

Mr. Chambers: I offer in evidence Defendants' Exhibits AA71 and AA72 for identification.

The Master: They will be marked in evidence.

Mr. Ransom: That is over my objection.

The Master: The contract is Defendants' Exhibit AA72; the modification or extension agreement is Defendants' Exhibit AA71.

Marked respectively, Defendants' Exhibits AA71 and AA72 in evidence.

Mr. Chambers: I offer this one of October 5th, 1906, a contract between the Gulf Refining Company and the Kings County Lighting 30819 Company, if counsel does not object on the ground that it is a copy.

Mr. Ransom: I do object on that ground.

Mr. Chambers: Then I withdraw the offer. That is all.

The Master: Any questions?

Mr. Ransom: Yes.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Elsman, have you also produced here under Mr. Chambers' subpoena certain other contracts?

A. I have all the contracts that we have in our files.

Q. May I see them?

A. Yes (handing to counsel).

The Master: Haven't you got all of the Kings County Lighting contracts in yet?

Mr. Ransom: What is that?

The Master: Did we not get all of the Kings

30821 County Lighting contracts in?

Mr. Ransom: There are some of them that are not yet in.

Q. Mr. Elsman, you are familiar with the annual reports of your company to the Public Service Commission for the First District?

A. From the period that I have been connected with the company, yes.

The Master: How long is that?

The Witness: Three years.

Q. And has your company correctly shown in those reports the amount of gas oil used by it in each year, and the total amount of money paid for it?

30822 A. We have.

Mr. Chambers: I object to that as incompetent, irrelevant, immaterial and not cross-examination. I did not ask him anything about his reports to the Public Service Commission.

The Master: I will take it. It bears upon the contracts.

Mr. Chambers: His report to the Public Service Commission?

The Master: Yes.

Mr. Chambers: Exception.

Q. Has your company made a contract for 1920 delivery yet?

A. I was going to say we are negotiating, but I have not closed the contract.

Q. You have had great difficulty in obtaining gas oil for the future, have you?

Mr. Chambers: I object to that.

The Master: Objection overruled. Are you the purchasing agent of the company?

The Witness: I am vice president and general manager.

The Master: You have charge of the purchasing?

The Witness: Yes. 30824

Q. Have you had great difficulty in negotiating a contract for future delivery of gas oil?

Mr. Chambers: I object to the question in that form, as a conclusion. "Great difficulty"—that is Judge Ransom testifying.

The Master: I will let him answer it.

Mr. Chambers: Exception.

A. I have not been able to get the oil that I want for 1920.

Q. The quantity?

A. Either in quantity or price.

Q. Have you been able to get any quotation under eight cents? 30825

A. I have not.

Mr. Chambers: I object to that as incompetent.

The Master: Overruled.

Mr. Chambers: Exception.

Q. Any quotation you have received has been over eight cents?

Mr. Chambers: I object to that as incompetent; I did not ask him anything about it on direct.

The Master: Overruled.

Mr. Chambers: Exception.

A. They have.

Mr. Ransom: That is all.

30826 Carleton Macy, Direct.

CARLETON MACY, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. What office do you hold with the Queens Borough Gas and Electric Company?

A. I am president and general manager.

Q. And you have produced certain contracts here?

A. Yes.

Q. Have you the original contract dated December 5th, 1904, between your company and the Gulf
30827 Refining Company?

A. Yes.

Q. I show you this paper which you produced. Is that your signature (indicating)?

The Master: He says that is the contract.

A. Yes, sir.

Q. And Mr. Lyon's signature?

A. Yes, I believe so.

Mr. Chambers: I offer this contract in evidence, being a contract dated December 5th, 1904, signed by Edward A. Lyon, for the Gulf Refining Company, and Carleton Macy, president
30828 of the Queens Borough Gas and Electric Company.

Marked Defendants' Exhibit AA112.

Q. The original contract dated March 30th, 1908, between the Gulf Refining Company and your company?

(Witness hands paper to counsel.)

Mr. Chambers: I offer that in evidence.

Q. Are those the original signatures there, Mr. Macy?

A. Yes.

Q. The same as before?

A. Yes.

Mr. Chambers: I offer in evidence contract dated March 30th, 1908, between the Queens Borough Gas and Electric Company and the Gulf Refining Company.

The Master: Same objection, I suppose. Same ruling and exception.

Marked Defendants' Exhibit AA113.

Q. Have you one between your company and the Gulf Refining Company, of April 21st, 1909?

A. No, I think not. We have a later one.

Q. What date is the later one?

A. December 19, 1918. 30830

Q. Have you any contracts there dated 1909 for oil?

A. Yes, for oil. The Standard Oil Company.

Q. Let me see them, will you?

A. You already have them.

Q. Any others?

A. Yes.

Q. That I have not?

A. There are a number of them (handing counsel).

Q. I show you a paper dated November 15, 1911, for 3,000,000 gallons of gas oil at 2.60. Is that your signature (indicating)? 30831

A. Yes.

Q. And Mr. Higgins' signature?

A. Yes.

Mr. Chambers: I offer this contract in evidence, dated November 15, 1911, between the Standard Oil Company of New York and the Queens Borough Gas and Electric Company.

Mr. Ransom: I am under the impression that is in evidence. I think Mr. Higgins produced it.

The Master: Are you sure this is not in evidence?

Mr. Chambers: I better make sure.

Mr. Ransom: I have no objection on that ground, though.

Mr. Chambers: Yes, we have that. That is all.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Macy, have you produced here under subpoena certain other contracts?

A. (Witness hands counsel papers.)

30833 Q. Mr. Macy, is this document the duplicate original of a contract dated December 19, 1918, between the Gulf Refining Company and the Queens Borough Gas and Electric Company, produced by you under Mr. Chambers' subpoena (handing witness)?

A. Yes.

Q. Those are the original signatures thereon?

A. Yes.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: Objected to as incompetent, irrelevant, immaterial and not proper cross-examination.

The Master: Objection overruled.

Mr. Chambers: Exception.

30834 The Master: The paper is received as Exhibit 452.

Marked Complainant's Exhibit 452.

Q. Have you also produced in pursuance of Mr. Chambers' subpoena certain correspondence between yourself and the Gulf Refining Company relative to the kind of oil which they were undertaking to deliver to you under that contract?

A. Yes.

Mr. Ransom: I offer in evidence the letter of March 14, 1919, from the Gulf Refining Com-

pany, Edward A. Lyon, District Sales Manager, to Mr. Macy of the Queens Borough Gas and Electric Company.

Mr. Chambers: Same objection.

The Master: Same ruling.

Mr. Chambers: Exception.

Marked Complainant's Exhibit 453.

Q. Is this a copy of the letter that you sent to Mr. Lyon, to which this is a reply?

A. Yes.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: I make the same objection. 30836

The Master: Objection overruled.

Mr. Chambers: Exception.

Received in evidence and marked Complainant's Exhibit 454.

Q. I show you this memorandum under date of March 3, 1919, addressed to Mr. Davies and Mr. Webster of your staff, and I ask you if it is true as therein stated that during the week prior to March 3, 1919, you had advised Mr. Lyon, Manager of the Gulf Refining Company, that the Oklahoma oil previously furnished to you would not be satisfactory?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial. 30837

The Master: Objection overruled.

Mr. Chambers: Exception.

A. Yes.

Q. Is this a copy of a letter received by you from the Gulf Refining Company under date of December 23, 1918?

A. Yes.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: I make the same objection.

The Master: Where is the original?

The Witness: I don't know.

Q. You know it to be a copy, however?

A. I know it to be a copy.

The Master: Objection overruled.

Mr. Chambers: Exception.

Paper received in evidence and marked Complainant's Exhibit 455.

Q. Do you recall a time a number of years ago, prior to the war when the Gulf Refining Company failed to deliver oil under the contract and you had to procure oil elsewhere?

Mr. Chambers: I object to that as incompe-

30839 tent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. In the spring of 1908, I think it was, they were not in position to furnish us with oil, and we purchased a barge from the Standard Oil Company until the Gulf Refining oil came later.

Q. You have been familiar with the annual reports made by yourself for your company to the Public Service Commission?

A. Yes.

Q. In those reports have you correctly shown the quantity of gas oil, the number of gallons of gas oil used by your company in each year?

30840 Mr. Chambers: I object to that as incompetent, irrelevant and immaterial and not proper cross-examination.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. Yes.

Q. And the amount in money paid therefor?

Mr. Chambers: I make the same objection.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. Yes.

Q. That is true during the period that the Public Service Commission has had jurisdiction over your company?

Mr. Chambers: I make the same objection.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. Yes, sir.

Mr. Ransom: That is all.

WILLIAM J. WELSH, called as a witness in behalf 30842
of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. What office do you hold in the New York & Richmond Gas Company?

A. President and General Manager.

Q. And you have been for some time?

A. Yes, sir.

Q. Have you produced here under subpoena certain contracts for oil between your company and oil companies?

A. I have. 30843

Q. Will you let us see what you have?

(Witness produces contracts.)

A. The others have been offered in evidence.

Q. These are the ones that have not been offered?

A. Yes, sir.

Q. This paper you have produced here, is that your signature there?

A. Yes, sir.

Q. And that is the signature of Mr. Williams for the Gulf Refining Company?

A. Yes, sir.

30844 William J. Welsh, Direct.

Q. Sales manager for the Gulf Refining Company?
A. Yes, sir.
Q. That is the original contract?
A. Yes, sir.
Q. Was the oil delivered under that?
A. Yes, sir.

Mr. Chambers: I offer in evidence contract dated January 9, 1914, between the Gulf Refining Company and the New York & Richmond Gas Company.

Mr. Ransom: I make the same objection as
30845 heretofore.

The Master: Objection overruled.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit AA114.

Q. I show you a paper dated July 1, 1914. Is that your signature?
A. Yes, sir.
Q. For the New York & Richmond Gas Company?
A. Yes, sir.
Q. And that of J. W. Williams for the Gulf Refining Company?
A. Yes, sir.

30846 Mr. Chambers: I offer this contract in evidence, dated July 1, 1914, between the Gulf Refining Company and the New York & Richmond Gas Company.

Mr. Ransom: I make the same objection.

The Master: Objection overruled.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit AA115.

Q. I show you another paper dated March 16, 1908. Do you recognize the signatures at the bottom?
A. Yes, sir.

Q. F. H. Shelton, for the New York & Richmond Gas Company.

A. Yes, sir.

Q. That is his signature?

A. Yes, sir.

Q. And Mr. George M. Detrich for the Gulf Refining Company?

A. Yes, sir.

Q. This is the original contract, produced by you?

A. Yes, sir.

Mr. Chambers: I offer in evidence contract dated March 16, 1908, between the Gulf Refining Company and the New York & Richmond Gas Company. 30848

Mr. Ransom: I make the same objection.

The Master: Objection overruled.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit AA116.

Q. I show you another paper and ask you if you recognize the signatures at the bottom?

A. I recognize the signature of F. H. Shelton.

Q. And of the district sales manager for the Gulf Refining Company?

A. Yes, sir.

Q. The same as the other one? 30849

A. Yes, sir.

Mr. Chambers: I offer in evidence contract dated May 24, 1917, between the Gulf Refining Company and the New York & Richmond Gas Company.

Mr. Ransom: I make the same objection.

The Master: Objection overruled.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit AA117.

Mr. Chambers: That is all.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Welsh, have you produced here under Mr. Chambers' subpoena any other contracts?

A. Yes, sir; they have been offered in evidence.

Q. All have been offered?

A. I think so.

Q. Mr. Welsh, you are familiar with the annual report which your company has made to the Public Service Commission from year to year?

A. Yes, sir.

Q. And in those reports has your company cor-
30851 rectly set forth the number of gallons of gas oil used by your company in each year?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial and not proper cross-examination.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. Yes, sir.

Q. And the amount of money paid therefor?

Mr. Chambers: I make the same objection.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. Yes, sir.

30852 Q. And that covers the period of the jurisdiction of the commission over your company?

A. Yes, sir.

Q. Did you produce here under Mr. Chambers' subpoena original contract between your company and the Gulf Refining Company under date of June 24, 1919?

A. Yes, sir.

Q. And is this such contract?

A. Yes, sir.

30853

Mr. Ransom: I offer it in evidence.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial and not proper cross-examination.

The Master: Objection overruled.

Mr. Chambers: Exception.

Paper received in evidence and marked Complainant's Exhibit 456.

(Witness excused.)

30854

MICHAEL J. KEANE, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Where are you employed?

A. In the office of the Corporation Counsel.

Q. In what capacity?

A. Examiner.

Q. Was there placed in your hands a subpoena directed to William R. Plaatje?

A. Yes, sir.

Q. And was this the copy to serve on him?

30855

A. Yes, sir.

Mr. Chambers: I offer the original in evidence.

Mr. Ransom: I object to it as incompetent.

Mr. Chambers: I want to show that he cannot be found.

Mr. Ransom: It is quite immaterial.

The Master: Mr. Keane, tell us what you did to try to serve him.

The Witness: I went to the address given and made inquiries—

Q. First of all, what was the address given?

A. 309 East 58th Street. That address was on the paper when I got it, a piece of paper attached to the subpoena. I went to the address given and there was nobody home. I made inquiries and found that his mother lived there.

Q. Now?

A. Now. I went back later on that same evening and saw the mother and she said she had not seen or heard of the son in three years, and didn't know anything about him, and don't know where he is.

30857 Q. Did you ask anybody else there?

A. I asked the janitors and other people, and they had not seen him around there.

Q. And nobody knows where he is?

A. No.

Q. His mother doesn't know?

A. No.

Q. You are satisfied, are you, that his mother does not know where he is?

A. I believe she told the truth. She is employed by the Charity Organization Society. I was told that by the janitor.

Mr. Chambers: I suggest under the circumstances this ought to be marked.

30858 Two papers received in evidence and marked Defendants' Exhibit AA118.

Q. You are satisfied that you cannot find him to serve him with the subpoena in this jurisdiction?

A. Yes, sir; I could not find him.

Mr. Chambers: That is all.

(Witness excused.)

Mr. Chambers: I offer in evidence under the same arrangement as heretofore made the tax report which I had in court here last night con-

taining the entries of Mr. William R. Plaatje, who was a Deputy Tax Commissioner at the time.

Mr. Ransom: I object to that. I am not overly anxious to put the full facts on the record regarding this man, and I would not stipulate anything about this man or what he did while he was in the department.

Mr. Chambers: I don't ask you to stipulate anything.

The Master: Mr. Chambers says he is not asking you to stipulate, he is offering it as a 30860
matter of right.

Mr. Ransom: If he offers it as a matter of right I object to it.

The Master: I will take it.

Mr. Chambers: The same as if I had the record here with the entries, in court? I had them here last night.

The Master: Yes, include them in your tabulation to be furnished to the other side. I will give you an exception, Mr. Ransom.

Mr. Ransom: May I talk to your Honor a minute about that?

The Master: I will assume that he is every- 30861
thing you say about him.

Mr. Chambers: I will call you to the stand if you know where he is.

(Conference off the record between the Master and counsel.)

30862 George E. Goldthwaite, Direct.

GEORGE E. GOLDTHWAITE, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Now, Mr. Goldthwaite, by whom are you employed?

A. Mr. Milo R. Maltbie.

Q. And what is your business, are you an engineer?

A. I am an engineer; yes, sir.

Q. What kind of an engineer?

30863 Q. Electrical engineer.

Q. And you are a graduate of what?

A. Perdue University.

The Master: Wisconsin?

The Witness: No, Indiana.

Q. And how long have you been practicing your profession?

A. Since 1911.

Q. And did you, by direction of Mr. Maltbie, prepare or examine certain reports of gas companies of the City of New York?

A. I did.

Q. These reports you found with the Public Service Commission?

30864 A. Yes, sir.

Q. And then you made up certain tables?

A. Yes, sir.

Q. Prepared the work from the—took the data from the reports which I am going to ask you about, and then set them forth in tables?

A. Yes, sir.

Q. Take this first table which you prepared, which is Table 150, is it?

A. Yes, sir.

Q. The reports of what companies did you use in the preparation of that table?

Mr. Ransom: Objected to, immaterial and incompetent, the qualifications of the witness to deal with gas statistics in no way shown.

The Master: I will let the witness answer this question.

The Witness: The reports of the Consolidated Gas Company, the Astoria Light, Heat & Power Company, the New Amsterdam Gas Company, the Central Union Gas Company, the Standard Gas Light Company, the New York Mutual Gas 30866
Light Company, the Northern Union Gas Light, the New York & Queens Gas Company.

Mr. Ransom: I move to strike out the answer on the grounds which I have just mentioned.

The Master: I will let it stand.

Mr. Ransom: Exception.

Q. What years did you cover?

Mr. Ransom: Objected to, immaterial and incompetent, on the grounds already indicated.

The Master: I will take that.

Mr. Ransom: Exception.

A. The years 1906 to 1918, inclusive, of a half year 1906 and all the year 1918.

30867

Q. Did you use the report to the Commission of Gas & Electricity for the year ending June 30, 1907, of each of those companies?

Mr. Ransom: Objected to as immaterial.

A. I did.

Q. You found that report on file with the Public Service Commission?

A. Yes, sir.

The Master: Allowed.

Q. Also the predecessor of the Public Service Commission was the Commission with whom the report was filed?

A. Yes.

Q. For that period ending June 30, 1907, what page of the reports of each of those companies did you use?

Mr. Ransom: Objected to as immaterial and incompetent, hearsay, includes companies other than the complainant.

The Master: The witness has not said a single thing yet that bears upon this issue, and I will let all this preliminary stuff in.

A. Page 22.

Mr. Ransom: He has not in any way identified the report.

30869

The Master: No, I know that.

Mr. Ransom: And the reports are in court?

The Master: I know it.

Mr. Chambers: I cannot bring them all in at once, can I?

Mr. Ransom: What this very young man may think is a report—

The Master: Who was it, Pitt said something about not being worried about being charged with being a young man?

Mr. Ransom: You know what happened to Pitt, don't you?

30870

The Master: Yes.

Mr. Chambers: I think the Court is a pretty young man, and you are charging him with being young.

The Master: That is where you are mistaken. I am a good deal older than you are.

Q. Now, for 1907 you used the reports of these companies to the Public Service Commission?

Mr. Ransom: Objected to, incompetent.

Q. For the half year ending December 30, 1907?

The Master: I don't know what it is, and what it is all about yet, but I will let him state what he worked on.

A. For the half year 1907.

Q. What page?

A. Page 52-G.

Q. For 1908, the report of the Public Service Commission of each of these companies?

A. Page 46.

Q. That is for the year ending December 31, 1908?

A. 1908.

Q. And for 1909 and 1910, what page of the report?

A. Page 52.

Q. Of the reports of each of these companies to the Public Service Commission? 30872

A. Yes.

Q. Now, from 1911 to 1918, inclusive, the reports of those companies to the Public Service Commission, what page?

A. Page 44.

Q. Now, what do you show in this table?

Mr. Ransom: Objected to, incompetent, no qualifications shown.

Q. Not what is on it, but generally, what?

The Master: What is the subject-matter that you understood to cover on this table?

The Witness: The manufacturing capacity of the various plants of the various companies named. 30873

Q. Of what is known as the Consolidated system?

The Master: Well, of these companies.

Q. Of these companies?

A. Of these companies.

The Master: In other words, as I understand it now, you are calling Mr. Goldthwaite for the purpose of proving a table prepared by him which will show the manufacturing capacity of those various companies?

Mr. Chambers: From 1906 to 1918, of those companies.

The Master: That is upon their reports to the Public Service Commission?

Mr. Chambers: Yes, sir.

Q. That is what this table shows, does it?

Mr. Ransom: Objected to as incompetent.

The Master: You better show the qualifications of this witness to prepare any such kind of a table.

Q. What experience have you had in the preparation of tables of this kind, Mr. Goldthwaite?

30875 A. I have had experience in various places in the preparation of statistics. First, I think with the Pittsburgh Railways Company, as assistant to the electrical engineer.

Q. First of all, you are a graduate of the Purdue University with a degree of B. S.?

A. Yes.

Q. In engineering?

A. Yes, electrical engineering.

Q. The next, for 1911 and 1912, you were with the Westinghouse Electrical Company?

A. Yes.

30876 Q. Engaged in testing electrical machinery?

A. Yes.

Q. And from 1912 to 1914, what were you doing?

A. I was load dispatcher and assistant to the electrical engineer of the Pittsburgh Railways Company.

Q. From 1914 to 1916?

A. I was what they call power director of the Norfolk & Western electrification. That corresponds very much to what they call chief operator in a power system.

Q. In 1916 and 1917?

A. 1916 and 1917 I was associate editor of the Railway Age Gazette, now the Railway Age, and the Railroad Electrical Engineer, published in this city.

Q. And you left that position to enter the army in the aero squadron?

A. I left that position to enter the army and became a flyer, pilot and flight commander of an aero squadron at the front.

Q. The 24th?

A. Yes, the 24th Aero Squadron.

Q. In 1916 and 1919 you were the engineer on construction work for the Lewis & Roth corporation of 30878
Philadelphia?

A. I was an engineer and foreman in construction work, installing machinery, electrical machinery.

Q. As editor of the Railway Age Gazette and Railway Age and Railway Electrical Engineer, did you compile any statistical data?

A. A great deal.

Q. Just tell in detail what you did?

A. In, for instance, the annual convention number of the Association of Railway Electrical Engineers, there is data prepared on all electrical work on the steam railroads. It is just—we get the data from various sources from our own files and from 30879
various technical papers and compile it. Then in the annual issues of almost all magazines, technical papers, including the Railway Age, one of the issues around January 1st publish statistics on various subjects, and I have prepared some of those statistics.

Q. Now, to return to this table 150, how did you do the work?

Mr. Ransom: Objected to, immaterial and incompetent. If your Honor thinks the witness is in any way qualified, I would like to cross-examine him.

30880 George E. Goldthwaite, Cross.

Mr. Chambers: Well, I suggest counsel cross-examine as to his qualifications to make this table.

The Master: All right.

Mr. Ransom: I said if your Honor thought he was in any way qualified.

The Master: I will allow you to cross-examine.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Have you ever been connected with any company manufacturing and selling gas?

A. I have not.

30881 Q. Or with any company making or selling gas generators or other gas manufacturing apparatus?

A. I have not.

Q. Have you been connected with any publication which dealt with the statistics of gas manufacture?

A. I have not.

Q. Did you ever at any time in any place prepare plans and specifications for apparatus of gas manufacture?

A. I did not.

Q. Up to the time that you started this work for Mr. Maltbie, had you ever had any experience with the annual reports of a gas company.

30882 A. I had not.

Q. How old are you?

A. Thirty.

Q. Have you ever studied any books on the capacity of gas works?

A. On the capacity of gas works?

Q. Yes, the manufacturing capacity?

A. No books on the capacity of gas works, no.

The Master: As I understand it, Judge Ransom, this witness had not undertaken to do anything more than tabulate figures.

30883

Mr. Ransom: Here is a man without the slightest knowledge or experience in gas manufacturing apparatus.

The Master: Does he need any for this purpose?

Mr. Ransom: He has undertaken here to make a selection and a combination of tables which he says were reported to the Commission relative to gas works. For all that we may know he may not be able to distinguish between a generator set and a boiler.

The Master: But that doesn't seem to be part of this paper. As I understand the offer, it is 30884
to prove that the reports gave certain figures that he has set forth in the table. It does not require any particular expertness to do that.

Mr. Ransom: The reports are here and these reports are rather complicated things. This company is not responsible for this form of report, this is something that has been imposed on this company by this man's present employer. When even the authors of this plan disagree among themselves as to what is in this form of report, and what it requires, how can this young man out of the greatness of his lack of experience
come forward and undertake to sort out these 30885
details in that sort of a table?

The Master: Well, I am going to take the proof that will be offered within the rules of evidence, and if the basis of this table comes in, I shall get the witness to swear that he has tabulated certain figures in this report. You may be able to bring out by cross-examination or otherwise that the reports themselves or the figure selected are not complete, or some other feature.

30886 George E. Goldthwaite, Cross.

Mr. Ransom: Well, for the purpose of framing another objection, may I ask the witness one further question?

The Master: Go ahead.

Q. Do I correctly understand what you have done to be this, that you have taken these pages or documents which you have found over in the Public Service Commission, and you have undertaken to tabulate from those pages portions of what you found on those pages?

A. I have undertaken in this table to copy certain
30887 figures out of the reports.

Q. Who determined what figures should go in, did you? Into this table?

A. I did not determine what the nature of the table was to be.

Q. Did you determine what figures you were to put in the table?

A. Why, I determined which of the figures on the page related to the subject.

Q. The kind of a table you had been told to get up?

A. (Continuing.) Related to the matter in hand, yes.

30888 Mr. Chambers: The manufacturing capacity?

The Witness: The manufacturing capacity.

Q. You did not include in this table all of those figures that were on those pages?

A. No.

Q. You selected some of them?

The Master: If you want to see what he selected and what he took, get one of those books in evidence.

Mr. Ransom: We tried to offer one of those books, and they objected.

The Master: Let us go a little further and see what.

Mr. Ransom: May I have a copy of this for the purpose of examining him, first off?

Mr. Chambers: When it is offered, I will give you a copy.

The Master: It is not necessary just now.

Mr. Ransom: To show his qualifications.

The Master: We will come to it in time.

Mr. Ransom: Exception.

The Master: Before we can have any table at all, we have got to have this first report of 1906 30890
and 1907 for the Consolidated.

RE-DIRECT EXAMINATION BY MR. CHAMBERS:

Q. I now show you report of the Consolidated Gas Company for the year ending June 30, 1907, page 22, and ask you if that is the page that you used in this table 150?

A. Yes, that is the page.

Mr. Chambers: Now, I offer in evidence that page of the report of the Consolidated Gas Company ending June 30, 1907, and only so much of it as relates to the manufacturing capacity.

Mr. Ransom: I object to a partial offer.

The Master: He can offer any part he likes. 30891

Paper marked Defendants' Exhibit AA119.

The Master: That you say is the original report for that period?

Mr. Chambers: Yes, sworn to by Mr. Carter. You do not dispute the signature of Mr. Carter when he took oath, do you?

Mr. Ransom: I admit that this document is signed and sworn to by R. A. Carter, vice president.

Q. I now show you the report of Consolidated Gas Company to the Public Service Commission for the

half year ending December 31, 1907, being the original report, and ask you to look at page 52G, and see whether that is a page you used?

A. Yes, sir; it is.

Mr. Chambers: I offer so much of that page as relates to the manufacturing capacity.

Marked Defendants' Exhibit AA120.

The Master: I want to get the reports of other companies, which is the very next item in this table, 150, I want you to bring out the admissibility of those other reports.

30893 Mr. Chambers: You refer to the Astoria there?

The Master: No, the first item here is Consolidated.

Mr. Chambers: Yes.

The Master: 51,000, and under that "Other Companies 92,778."

Mr. Chambers: You mean the Astoria Company?

The Master: I don't know what company that is.

Mr. Chambers: Other companies, is all the others that he named.

30894 The Master: Take one of them.

Mr. Chambers: Astoria.

Mr. Ransom: Do I understand your Honor correctly that those two pages are marked in evidence?

The Master: The part offered of those two pages is received in evidence.

Mr. Chambers: I said on those pages I offer so much of them as related to the manufacturing capacity.

Mr. Ransom: And my objection is considered as made to each of these?

The Master: Yes.

Mr. Ransom: On the grounds previously indicated?

The Master: Yes.

Q. I show you a report of the Astoria Light, Heat & Power Company. Look at pages 21 and 22. Did you use page 22 for the manufacturing capacity of this company?

A. I used page 21.

Q. As to this Astoria Company it is page 21. In those other two offers I made I will include pages 21 and 2 instead of 22 alone. 30896

Mr. Ransom: It would be pages 21 and 22 in the 1906 report, and it would be page 526 in the 1907 report.

Mr. Chambers: Yes.

Mr. Ransom: If page 21 is received, I shall take it that is over the same objection as to page 22?

The Master: Yes, you are offering Astoria?

Mr. Chambers: Yes, page 21.

The Master: You are offering, as I understand it, from page 21, so much of it as gives the daily capacity of each plant; is that correct?

Mr. Chambers: Yes. 30897

Mr. Ransom: What kind of capacity; any kind that is there shown?

Mr. Chambers: Water or coal gas.

The Master: That only refers to coal gas on page 21; that is all there was at that time. That brings up a question I want to dispose of. Is there any objection to taking this report?

Mr. Ransom: The same objection already indicated.

The Master: I want to bring out clearly the point that is in my mind, as to whether there is

30898

any objection to this report going in because it is the report of the Astoria Company and not of the Consolidated?

Mr. Ransom: I object to the offer of a portion of the report.

The Master: Do not get into the O'Brien habit of fencing with me.

Mr. Ransom: I did not mean to fence with you, and I would not get into the O'Brien habit for anything.

The Master: If it were of the Consolidated Company I would receive it under any circum-
30899 stances, as an admission against interest. As to the Astoria Company, all the stock of which is owned by the Consolidated Company, is there any objection on your part to my receiving this in evidence—because it is the report of a company other than the Consolidated Company?

Mr. Ransom: I do not of course concede that the report of the Astoria Company is an admission against the complainant company. I do not think it is receivable because of this stock relationship; I do not think that has any bearing on it. The fact that this is another company, and that a report of a company other than the com-
30900 plainant is being offered, stands and speaks for itself. I do not object to the offer of this document except on the ground that I do not believe that they should offer merely portions of them.

The Master: That is the ground of your objection?

Mr. Ransom: That is the only ground of my objection.

The Master: Then I will receive it.

Page 21 was then marked Defendants' Exhibit AA-121.

30901

The Master: Give me the Mutual; that is one where there is not as complete a stock ownership as there is in the other. Give me that for 1906 and 1907.

Mr. Chambers: This is the New York Mutual report filed with the Commission. You used page *22*, did you, of this book (handing witness)?

The Witness: Yes, water gas.

The Master: You are offering so much of page *22* as relates to the statement of total daily capacity?

Mr. Chambers: Yes, right.

30902

The Master: Do I understand, Judge Ransom, that your objection runs on this same one ground, that it is only part of the document?

Mr. Ransom: Well, the situation as to the Mutual, your Honor, is different. The Mutual Company has made up its report for many years, practically all of the years of this period, on a different basis so far as its statement of capacity is concerned. There are two different kinds of capacities. One is what we may call plant capacity, and the other is generating capacity.

The Master: I see that.

30903

Mr. Ransom: Generating capacity is what, if all the machines were running at one time, they could all produce.

The Master: I understand.

Mr. Ransom: Plant capacity is the practicable capacity of the number of machines you could keep in operation or have in operation at any one time.

The Master: Other than the point you now make, that these statements contained in some of these reports are subject to explanation, from other parts of the report perhaps or elsewhere, and the contention that it is only part of the docu-

30904

ment, do you make the objection that the report of the New York Mutual for any purpose, no matter how accurate the statement may be, cannot be offered in evidence in this case?

Mr. Ransom: The difficulty I am confronted with in that respect, your Honor, is that here the Consolidated and the Astoria have made up their reports on what I concede to be the correct basis; the Mutual during most of this period, in this respect having made up its reports wholly independently, has made them up on what I regard as an incorrect basis.

30905 The Master: I understand.

Mr. Ransom: This witness not knowing the difference between a generator set and a threshing machine, has gone on and figured them in the same way.

The Master: I understand that. That is what I want to get. Do you object? Assuming now that this report I now have in my hand is the daily capacity in the same form exactly as the Consolidated, would you have any objection to this report other than the objection that it is part of the report that is being offered and not the whole of it?

30906 Mr. Ransom: May I confer a moment and see?

The Master: Would you object to it on the ground it is a New York Mutual report?

Mr. Ransom: I do not object to it on the ground it is a New York Mutual report.

The Master: I have got your attitude clearly in mind now and I am going to make this ruling: I am going to permit Mr. Chambers to offer in evidence the page and item used by this witness in each one of these reports, assuming that your

30907

objection runs to every one of these reports upon the ground that only part of the report is being offered, and only on that ground; except that as to certain of these reports it will appear on cross-examination or otherwise that the daily capacity given was a generator capacity as distinguished from the plant capacity, as stated by you.

Mr. Ransom: Your Honor has examined the Mutual report and I have not.

The Master: Yes.

Mr. Ransom: Does it appear on the face of the Mutual report that they are made up on a different basis than the reports of the other company?

30908

The Master: Yes, in red ink opposite the statement of the capacity—if Mr. Goetz will permit me to talk to you for a moment—it says "Generator: See supplementary report." I wanted to get clear in my mind first the question whether these reports could be received. You apparently are quite willing to let them go in, so long as your rights are protected in making clear the situation?

Mr. Ransom: Only I want to make one thing clear—I do not regard them, and I do not know that your Honor regards them, as in any sense an admission again this complainant.

30909

The Master: No.

Mr. Ransom: I do not believe that.

The Master: No, I cannot take the reports of the Mutual and the other companies perhaps as admissions against interest; but the theory on which I might receive them over your objection, although I am not prepared to say that I can, is that they are statements made under oath in pursuance of law, compelled to be made by public statute, and that perhaps as such public docu-

30910

ments made in pursuance of and in compliance with the statute I must take them.

Mr. Ransom: My own personal view, as your Honor knows, is that any report made by any gas company under these provisions is admissible in its behalf.

The Master: That is what I have been trying to draw from you, whether you make any point about it. I assume that is the theory on which you offer it, is it, Mr. Chambers—that they are public documents made in conformity with the law?

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Mr. Chambers: That is one theory.

The Master: And therefore you would be entitled to offer them over the objection of Mr. Ransom?

Mr. Chambers: Yes.

The Master: I want to get my rule clear, because Mr. Ransom may want to come along later on and offer others.

Mr. Ransom: I may want to offer the others.

The Master: I want to have the same rule apply to every company.

Mr. Chambers: I offer them because they are sworn to by the company and it is the only way you can obtain the capacity of the plants.

30912

The Master: No.

Mr. Chambers: You could go to the books, but this is the quickest way to do it.

The Master: No, you could call the engineer of the company and ask for the data, or those who swore to these reports, and ask for it.

Mr. Ransom: This is a short cut.

The Master: I am inclined to agree with you, if that is your contention, that as a document made in conformity with law and a document

30913

which the gas company was compelled to make truthfully, subject to public supervision, you are entitled to put it in; but when I make that ruling I want to have it clearly understood that it is a rule which I shall make applicable to this case. That is all. Judge Ransom, as I understand, makes no point about it.

Mr. Ransom: I make no point except the one that I have made as to the parts offered.

The Master: To complete what I have to say, I am going to let Mr. Chambers offer in such parts of these reports as he deems necessary for this tabulation. I am going to rule that Mr. 30914
Goldthwaite is competent to prepare a table, simply adding up the figures shown on this statement. It will then be for you to bring out the fact that, for instance, in this report I now have before me there is the generator capacity and not the capacity otherwise described, and bring out from this witness that he is not able to make his table conform to the generator capacity uniformly or to other manufacturing capacity uniformly.

Mr. Ransom: It does not seem to me that a table in which this witness has jumbled two very different things together in a way that no one 30915
who knew anything about the matter would do, makes the table admissible.

Mr. Chambers: You have not even seen the table; how do you know it is a jumble?

The Master: This will be received, this page 22 of the New York Mutual Gas Light Company report, ending June 30, 1907. That will be marked. Now, you proceed to offer in all the other reports you have used for this table.

Mr. Ransom: I know what these reports are and I am willing, if the respective pages are in-

30916 dicated—of course they are identical for the companies through the year, they are on a form furnished by the Commission, and I do not know that there is any need of having each page physically marked by the stenographer. I believe that the pages after the first year are identical for this information.

The Master: What is your suggestion?

Mr. Chambers: Mine?

The Master: No, Judge Ransom's.

Mr. Ransom: All that he needs to do is to go through and identify year by year the portions,
30917 or pages on which he offers the portions, without any physical markings.

Mr. Chambers: And consider that so much of that table as he identified was used for this table 150 in evidence.

Mr. Ransom: In evidence.

Mr. Chambers: Without my offering it or its being marked?

The Master: The witness has already stated the pages that he used. I do not see any sense of getting each book and looking at it.

Mr. Ransom: I do not think there is.

The Master: You are willing to have consid-
30918 ered in evidence under my ruling, and over your objection, reserving the exceptions to yourself—though they may not be of any value, you are willing to consider in evidence the pages referred to by this witness?

Mr. Ransom: As to each of these companies.

The Master: For the years stated?

Mr. Ransom: 21 and 22 as to 1905; 52 for 1907; 46 for 1908; 52 for 1909 and 1910, both inclusive; and 44 for 1911 to 1918, both inclusive.

The Master: Then we have that out of the way. Now, proceed, Mr. Chambers. You have all the books in evidence.

Mr. Chambers: Sometimes we use page 21, and that will be considered?

Mr. Ransom: Yes, I said any part of page 21 or 22.

Q. Is this table I show you, 150, correct?

A. It is.

Mr. Chambers: I now offer in evidence Table 150, being the table of manufacturing capacity, 1906 to 1918, of the Consolidated system. 30920

Mr. Ransom: I think counsel for the Attorney General ought to furnish us with several copies of these. We furnished large quantities of blueprints to them.

The Master: Have you any extra copies?

Mr. Chambers: No, not now. We can give him one.

The Master: You can make a couple of extra copies. Make a couple of more blueprints, Mr. Maltbie, and let Mr. Ransom have them.

Mr. Chambers: I want to withdraw Mr. Goldthwaite for a minute and let Mr. O'Brien examine a witness who wishes to go away. 30921

The Master: No, we will take him tomorrow.

Mr. Ransom: Your Honor, I notice on this table what I did not understand before, and if I did not catch it when the witness mentioned it—that they have included here the New York & Queens.

Mr. Chambers: What was that you said?

Mr. Ransom: I say in some way they have included here the New York & Queens Company.

30922

Mr. O'Brien: You make your criticisms after the case is over. It does not go to the validity or admissibility of this paper.

Mr. Ransom: Now, one moment. If the New York & Queens was mentioned by the witness, which I did not hear, I will not consent to or refrain from making objections to the receipt of the New York & Queens reports. The New York & Queens Company is located away out in Flushing; it is not in any way connected with the transfer system, is not even within the realm of what might be connected by any fair engi-

30923

neering possibility, and it has nothing to do with this case. If the New York & Queens, in view of the fact that Mr. Chambers did not mention the companies—

Mr. Chambers: I did mention the companies.

Mr. Ransom: Not now.

The Master: On what theory is the New York & Queens included in this table?

Mr. Chambers: Well, it is one of the companies here.

The Master: On the transfer system?

Mr. Chambers: I don't know.

The Master: You ought to know what the

30924

record shows.

Mr. Ransom: Why, no, it cannot be.

The Master: I am not going to take this table as an exhibit. The New York & Queens reports are not in.

Mr. O'Brien: May I ask your Honor if you are going to eliminate this paper because it refers to an affiliated company that is not part of the transfer system?

The Master: Yes.

Mr. O'Brien: You are going to confine our testimony to the system?

The Master: Yes.

Mr. O'Brien: That is hooked up with this—

The Master: The theory on which this is offered is that it is the capacity of the system.

Mr. Ransom: That is the only possible theory.

The Master: That is the whole theory of it, the system capacity.

Mr. Ransom: Without further examination of this witness, then, I shall object to the present offer.

Mr. Chambers: I will cure this. In view of his objection I will consent that so much of this 30926
table as relates to the New York & Queens Gas Company be eliminated. It does not spoil the table; it can be considered out.

The Master: You will eliminate it?

Mr. Chambers: I will eliminate it.

The Master: Redraft your table and leave it out.

Mr. Chambers: Until it is redrafted I object to it.

The Master: I will exclude the New York & Queens Company, and you will have to recast your table or I will not take it.

Q. Now, Mr. Goldthwaite, take Table 157—did 30927
you make up that table?

The Master: I think it should appear on the record that the numbers to which you refer are some office numbers of Mr. Maltbie, or of counsel for defendants.

Mr. Chambers: Yes.

The Master: They have nothing to do with this case so far.

A. Yes, sir.

Q. What data did you use in preparing that table?

30928

A. I used data from the Consolidated Gas Company's report.

Q. To the Public Service Commission?

A. To the Public Service Commission.

Q. And its predecessor?

A. Its predecessor.

Q. For what pages?

A. For 1907, '06, page 28. That is the report to the Commissioner of Gas and Electricity. For 1907, the half year ending December 31st, page 55G; for 1908, page 49; for 1909, page 55; for 1910, page 55;

30929 for 1911, page 65.

Q. That covers them all, doesn't it?

A. That does not cover the later years. It is page 65 for all the rest of the years.

Q. That is, from 1911 to 1918, inclusive?

A. Yes, sir.

Q. The table covers from 1906 to 1918, does it?

A. Yes, sir, including one-half year only for 1906.

Q. And this table taken from the report of the Consolidated Gas Company is for gas production and sales of that company as shown in the report?

A. Yes.

Mr. Ransom: That is what it purports to

30930 show.

The Master: Don't the reports show it?

Mr. Ransom: The reports show it, but not necessarily the reports according to Goldthwaite.

The Master: He says so much of the report as shows that.

Mr. Chambers: I offer in evidence report of the Consolidated Gas Company to the Public Service Commission for the years 1906 to 1918, inclusive, as described by the witness; that part of page 28 of the 1906-07 report; page 55G of the 1907 report; page 49 of the 1908 re-

port; page 55 of the 1909 report; page 55 of the 1910 report; page 65 of the 1911 report; page 65 for the other years 1911 to 1918—so much of those pages as relate to gas production and sales of the Consolidated Gas Co.

The Master: They will be considered in evidence.

Mr. Ransom: Just a minute. May I ask witness one or two questions?

The Master. Yes.

By Mr. Ransom:

Q. You took page 65, and you took part of the information on page 65 for the years 1911 to 1918? 30932

A. Yes.

The Master: Let me see that page, will you? What part of this page did you use? Where did you get your figures?

Q. Where did you get it on page 65 out of the great mass of material there contained?

A. From what I see now, I got it in the column—I got some of them from the upper column on the left-hand side

Q. What line?

A. Well, I will have to take each figure by detail and describe it if you want that. 30933

Q. What lines did you use?

A. I say I will have to take each figure by detail.

Q. Mention some of the lines you used there?

Mr. Chambers: I don't think this is the time to cross-examine the witness.

Mr. Ransom: This is exactly the time to find out how he did this thing.

Mr. Chambers: No, I don't think so.

Mr. Ransom: I want to find out what portions you are offering. That is very material.

Mr. Chambers: You can do that on cross-examination.

Mr. Ransom: Before you make an offer I am entitled to find out what he put in it, and I am asking the witness what line he used, if he knows.

Q. Did you do this personally?

A. Yes, I took the figures down personally and made the computations.

Q. You took each report and took this off yourself?

A. Yes, sir.

30935 Q. No one helped you?

Mr. Chambers: Yes, somebody did, didn't they?

Mr. Ransom: I know that Mr. Chambers wasn't there.

By the Master:

Q. Now, Mr. Goldthwaite, on this table the first item is, "Gas On Hand at the Beginning of the Year." Is that correct?

A. Yes.

Q. Is that intended to correspond with Line 1, "Gas on Hand at First of Year," on page 65?

A. That is 1918.

30936 Q. Never mind figures, does that line correspond with line 1?

A. Yes, it does.

Q. The next line is, "Balance at the End of the Year." Is that supposed to correspond to line 7, "Gas on Hand at the End of the Year"?

A. Yes.

Q. And the next line is, "Used from Holders, Plus or Minus." Where does that come from?

A. That is a deduction of one figure from the other.

Q. Now, "Made During the Year," what line does that come from?

A. That is the sum of lines 2 and 3.

Q. "Loss in volume," where did you get that from?

A. That occurs right here (indicating).

Q. It is between lines 3 and 4. "Received from Other Companies (a)"—where does that come from?

A. That is a deduction of "Sold to Other Companies" from "Received from Other Companies." The sum of those two lines 15 and 16—that has to be deducted from the form of the report. You will have to let me examine that.

The Master: I don't think it is necessary to do that.

A. The meaning of the line is clear. I cannot 30938
pick out at the instant what lines it was taken from.

The Master: I see. In your letter references at the bottom you have explained some of these figures and how you have arrived at them, have you?

The Witness: Yes, sir. On that particular one the note says, "This is the net amount received after deducting the amount sold or supplied to other companies."

Mr. Ransom: The only offer now is on the report, I take it.

The Master: Yes, he offered that page or so much of it as this witness used, and as has ref- 30939
erence to gas production and sales.

Mr. Ransom: I am sure I don't know, I am not sure that your Honor knows, and I am reasonably sure that the witness does not know how much he used and how much is offered.

The Master: I am going to take the page.

Mr. Ransom: The page?

The Master: Yes.

Mr. Ransom: Then page 65 is received?

The Master: For 1911 and subsequent years, and the other pages stated by the witness. They will be deemed in evidence.

Mr. Ransom: This is subject to my objection.

Mr. Chambers: I only offered so much as relates to this.

The Master: I cannot stop to analyze it now. I will take the page so far as it is applicable.

Mr. Ransom: That is subject to the same objection that I made to the offer of the other report.

The Master: Yes.

Mr. Chambers: I offer all the pages for all these years applicable to the table.

30941 The Master: Yes.

Mr. Chambers: That is received without being marked, under the stipulation?

The Master: Yes.

Mr. Ransom: I thought your Honor ruled in the whole page.

The Master: So far as applicable.

Mr. Ransom: Who knows what is applicable?

The Master: I don't know.

Mr. Ransom: Your Honor doesn't know and the witness doesn't know.

The Master: Then we will find out.

By Mr. Chambers:

30942 Q. Take this table, the last two columns, "Unaccounted For,' and "Unaccounted For in Per Cent Delivered to Mains," you computed that amount—that is a computation?

A. Yes, sir, that is a computation.

Q. Is the table correct?

A. The table is correct.

Q. Did you have assistants, did somebody else work with you on the table?

A. At times, yes, I think so.

Q. Was it all done under your supervision and direction?

A. It was all done under my supervision and personally checked.

Q. And it is correct?

A. It is correct.

Mr. Chambers: I offer the table in evidence, being Table 157, "Gas Production and Sales of the Consolidated Gas Company, 1906 to 1918."

Mr. Ransom: Counsel has not furnished a copy of this, so I will ask him a few questions.

Mr. Chambers: You mean before you object?

Mr. Ransom: I will ask a few questions for the purpose of formulating my objection. 30944

By Mr. Ransom:

Q. You have not used in your titles on this table the titles on the left-hand column, the titles shown in the annual reports in connection with these figures?

A. Is that a question?

Q. Yes.

A. I don't understand what you mean.

Q. Are these titles here the titles which you found in connection with the figures on page 65 and these other pages of the annual reports?

A. They are not taken directly as those titles. Some of them are not on that report. 30945

Q. And you have not in any instance used the titles that are used in the report in connection with the figures?

A. I do not know.

Q. Isn't it a fact that you have changed over these titles to suit your own purposes?

A. It is not a fact that I changed them over to suit my own purposes.

Q. You have not used these?

A. I prepared this table under the direction of Mr. Maltbie and Mr. Hine, and procured the data that they asked me to. I am not responsible for the titles.

Q. Oh, you didn't formulate the titles shown on the left-hand side of this proposed exhibit?

A. I did not.

Q. Was that worked up by somebody else?

A. Yes.

The Master: I cannot have you cross-examining on this paper.

Mr. Ransom: Just a moment, please.

30947 Q. On this report and all these reports you found certain figures which you took, is that true?

A. I did.

Q. And you found certain titles in the Commission form of report opposite those figures, did you?

A. Yes.

Q. Now you did not transfer those titles to this exhibit in connection with those figures?

A. I did not attempt to transfer them verbatim, no, I did not transfer them.

Mr. Chambers: I object, this is not preliminary.

The Master: I am going to cut it short in a minute.

30948 Q. You say you computed the "Unaccounted For." You did not take the "Unaccounted For" that is shown here in the report, did you?

A. Show me the report and compare the figures and we can find out. I computed the per cent, I think.

Q. Did you take the "Unaccounted For" shown in the report?

Mr. Chambers: What year are you talking about?

Mr. Ransom: 1918.

A. I certainly did in 1918.

The Master: I don't think I will allow this.

Mr. Ransom: Well, I just want to ask one or two questions.

The Master: No, I think that goes too far.

Mr. Ransom: I just want to show one more thing here and then I am through.

Q. I call your attention to page 65 of the 1918 report, the percentage of unaccounted for there given, 6.038. Have you taken that figure?

The Master: He said he computed his own percentage on it.

A. No, I didn't take that figure; I can explain that 30950
difference, if necessary.

The Master: I don't want it now.

Mr. Ransom: I don't think it is competent. I object to the receipt of the table made up by this witness, on the ground that it appears that this witness was not qualified to do the things he has undertaken to do in this table, because of his entire lack of knowledge of the gas business.

The Master: That will be overruled.

Mr. Ransom: It appears further with respect to this table—and I urge it as a ground of objection—that it is not a compilation or tabulation of the reports of the company as shown on these 30951
different pages of these reports, and hence it is not admissible here in any way whatsoever. In other words, in this report—the report is on the form prescribed by the Public Service Commission—certain figures are reported by the Company under oath in connection with certain definite items or headings which were very carefully prepared by the Commission. Now, this witness or someone for him—in fact it appears it was someone else—has taken those figures and has put them in connection with other and differ-

30952

ent headings involving other and different implications, so that the statement is in no sense a compilation of what the company reported, and this paper is not admissible except as a compilation of what the company reported.

Further, that in respect to unaccounted for gas, it appears affirmatively on the face of the table, and on the face of the exhibit, that he has not taken what the company reported, and that he has not tabulated what the company reported, because it appears on the face of the table that the Public Service Commission prescribed a way

30953

in which the gas lost and unaccounted for shall be computed, namely, line 8, minus line 18, and then provides for the ascertainment of a percentage, and shows the percentage of gas unaccounted for reported by the company, 6.038 for 1918. Now, this company reported 6.038. This witness, out of his complete lack of knowledge of the subject plucks a mystical 6.12 from somewhere. Likewise the company reported gas delivered to mains, 19,543,973,200 cubic feet in 1918. This witness obtains from somewhere, "Delivered to Mains" 19,276,000,000 cubic feet, a difference of a quarter of a million.

30954

I can go through these years and show that the witness has not undertaken to tabulate what the company reported under oath.

The Master: What does this purport to mean, Mr. Chambers?

Mr. Ransom: You can take it line for line and year by year—

Mr. Chambers: Exactly the gas production and sales of the Consolidated Gas Company, eliminating purchases and sales.

The Master: Does it purport to be a tabulation of their report?

30955

Mr. Chambers: Yes, eliminating wherever they duplicate purchases and sales. You want to have it right, don't you? Their report is not correct. They are their figures, taking out the duplications of purchases and sales and showing it correctly.

Mr. Ransom: I certainly think this witness and his more or less unidentified and undescribed employers—

Mr. Chambers: Eliminating sales and purchases from other companies.

The Master: Is it claimed that the reports made to the Public Service Commission are not 30956
in accordance with the orders of the Public Service Commission?

Mr. Chambers: That does not go to that extent. It is to show right from their own records what was the true gas production and sales of the Consolidated Gas Company, to show that right from their own figures, eliminating duplications.

Mr. Ransom: I offer to go right through and show year by year and line by line that instead of this being a tabulation of what the company reported to the Commission on the form prescribed by the Commission, a report acceptable 30957
to and accepted by the Commission at a time when this witness's present employer was passing on these things, that this witness who is wholly unqualified to do any such thing, has grabbed figures out of somewhere, and percentages out of nowhere and put them down as an exhibit. I object to it. For example in 1917 the company reported, in the manner fixed by the Commission, the percentage of unaccounted for. The company would have had no right, under pen-

30958

alties, to report anything else. They reported 7.45, and this witness out of his experience as a Railway Age Gazette employee put down 7.151.

The Master: Let me ask you this—

Mr. Chambers: In there they have duplicate purchases and sales.

The Master: Let me ask you this: Suppose Mr. Chambers was to take this witness and say to him, "Now, look at this report, Mr. Goldthwaite, and tell us what the company reported as the gas on hand at the beginning of the year 1918." Wouldn't he have a right to read off that

30959 figure from the report?

Mr. Ransom: The report is in evidence.

The Master: Wouldn't he have a right to read it off?

Mr. Ransom: These are not the figures in the report.

The Master: That first figure is.

Mr. Ransom: No.

The Master: Yes.

Mr. Ransom: Some of them may be. Some of them are and some of them are not. Just take 1917.

The Master: I am going to take this. You

30960 can explain it by cross-examination, but it will be received.

Mr. Ransom: I don't see on what theory this is received. Is it a compilation of the report?

The Master: It is a summary of the testimony to be given by this witness that he took off certain figures from these reports; that he found in these reports certain figures; that he has drawn certain deductions from it. You can very quickly on cross-examination show that some of the figures he gives are wrong, and thus destroy his

30961

testimony. I will take this the same as I did some of your schedules, as a shortcut of this witness's testimony.

Mr. Ransom: But this witness is not qualified.

The Master: Yes he is. You know what I said about this business of accountants adding up a column of figures and subtracting from some other figure. It doesn't mean anything to me.

Mr. Ransom: Is your Honor satisfied that he had a right, and that he was qualified to take figures that were reported to the Public Service 30962
Commission in the manner prescribed by the Public Service Commission—

The Master: And change them around?

Mr. Ransom: Change them around.

The Master: You can see what he did when you cross-examine him generally.

Mr. Ransom: The difficulty with receiving that sort of thing is that it goes in as an exhibit, and the exhibit is somewhere remote from the cross-examination.

The Master: Well, that is for some other Court to worry about. It won't fool me long.

Paper received in evidence and marked De- 30963
fendants' Exhibit AA122.

Mr. Ransom: It seems to me, your Honor, that when this man or his employers instead of calculating what has been reported under authority of law undertakes himself to conjure up something different and put that in the form of a table, that it ceases to be receivable as a summary or tabulation, and it loses the force and virtue which it had from the fact that it is a report made under the legal requirements to which you have referred, and it becomes utterly worth-

less for any purpose whatever. Would your Honor allow me an exception to the receipt of this computation?

The Master: I anticipate that the defendants will have a great number of schedules making deductions from figures from their point of view, and I am going to get their point of view and see what is in it.

Mr. Ransom: I just want to call your Honor's attention to another feature of this thing. They say here that these are the amounts shown in re-
30965 ports of the Public Service Commission and its predecessor, that the company has reported delivery to mains, that the company has reported percentage of unaccounted for, where in fact the company had not reported.

The Master: Wait until we get to the general cross, and we will see what there is to that.

Mr. Ransom: If the company had done any such atrocious thing as this witness has tried to do, the officers would have been sued by this witness's employers.

Q. Table 159, Mr. Goldthwaite?

A. Yes.

30966 Q. This is data taken from the reports of what companies?

A. Reports of the Consolidated Gas Company, Astoria Light, Heat & Power Company, New Amsterdam Gas Company, Central Union Gas Company, Standard Gas Light Company, New York Mutual Gas Light Company, Northern Union Gas Company.

Q. For the year ending June 30, 1907, covering 1906 and 1907 of those companies, do you say?

A. Page 24.

Q. Now, the 1907 report ending December 31, 1907?

A. Page 52G.

Q. And in 1908, what page?

A. Page 46.

Q. And in 1909 and 1910?

A. Page 53.

Q. And 1911 to 1918 inclusive?

A. Page 46.

Mr. Chambers: I now offer in evidence reports which I have here of those companies just mentioned by Mr. Goldthwaite, reports for 1906 30968
and 1907, ending June 30, 1907, that is one report, page 24, 1907, report page 52-G, and 1908, page 46, and 1909 and 1910, page 53, 1911 to 1918 inclusive, page 46, so much of them as is applicable to the number of gas holders of the Consolidated System Company, 1906 to 1918.

The Master: All right, mark them in evidence.

Mr. Ransom: That is over my objection.

The Master: You don't want me to sustain your objection, do you?

Mr. Ransom: What?

The Master: You don't want me to sustain 30969
your objection?

Mr. Ransom: I certainly do.

The Master: You really want me to keep these reports out, and you do not intend to use them at all?

Mr. Ransom: I want them to put all of the reports in.

The Master: I will let you read in any other portion of the reports that you want to read in.

30970

Mr. Ransom: Upon that statement I am somewhat mollified.

The Master: Why certainly, part of the same documents.

Mr. Ransom: If your Honor had ruled similarly as you have today, we could have put in our case in a very much shorter time.

The Master: I am not going to let these defendants use part of these reports for their purposes and bar you from using other portions for your purposes, any more than I would bar Senate Document 47, and I will let them go in too
30971 on the basis of what these companies say it costs to make gas, don't forget it.

Mr. Chambers: It won't be our exhibit.

The Master: Yes, it will, it will be in evidence.

Mr. O'Brien: It will become an admission against interest nevertheless.

Mr. Chambers: We do not vouch for all these facts in them.

The Master: But I have pretty good evidence, when you force these reports in, to take the statement in these reports as to what it costs these companies to make gas.

30972 Mr. Chambers: Where else would we go for our information?

The Master: I don't know.

Mr. Chambers: Except from these reports? We haven't any information except what we find in the company's books and records, have we?

The Master: But I am pointing out how my mind is working and I do not want someone to come along a week from now and intimate that I was asleep when this went in.

Mr. Chambers: Where can we get information to defend this case except from the companies?

Mr. Ransom: You have the best information here that there is. I suppose that Mr. Chambers wants to have his record perfectly correct—

The Master: That is why I did not see why Judge Ransom objected to it going in when he knows perfectly well he wants it.

Mr. Ransom: The information as to holders is not contained on pages on many of these reports. Many of those I am familiar with they are contained on the inserts in connection with 30974
pages.

The Master: We will consider the inserts.

Mr. Chambers: That is a part of the page.

Q. Now, you prepared this Table 159?

The Master: The book is in so far as Mr. Chambers wants to use it, that is the answer to it all. All of these books are in with the privilege to Mr. Chambers to use as much of them as he wants to use.

Q. You prepared this Table 159?

A. I did.

Q. What does that show?

A. It shows the number of gas holders of the Consolidated System Companies as reported to the Public Service Commission and predecessor commission 30975
within the time mentioned.

Q. Is it correct?

A. It is.

Mr. Chambers: I offer the table in evidence, being table—

The Master: Received as a summary of what the witness would testify to if asked questions as to each item.

30976 George E. Goldthwaite, Re-direct.

Mr. Ransom: May I just ask one question?

The Master: Yes.

By Mr. Ransom:

Q. Is this exactly the number as reported, or does this represent some different computation?

A. That is exactly the number as reported.

Q. That is you have just—

A. Holders in service.

Q. You have just simply compiled the report?

A. Yes.

Q. You are sure about that?

30977 A. Well, they may have reported some holders that were not in service. If so, why, I left them out of it; they made a correction in the report, I took account of the corrections.

Q. When you say the number of gas holders, what you mean is the number of gas holders which you think were in service?

A. No, the number of gas holders which the company reports.

The Master: As in service?

The Witness: Which it puts down in its report as in service.

Mr. Chambers: Being Table 159, which I of-

30978 fer, number of gas holders of Consolidated System Companies, 1906 to 1918, as reported to the Public Service Commission.

Received and marked Defendants' Exhibit AA123.

By Mr. Chambers:

Q. Now, Table 160?

The Master: What does that purport to be?

The Witness: That Table 160 is the compilation of the holder capacity of the Consolidated System Companies, 1906 to 1918.

The Master: Tabulated from the reports?

The Witness: Tabulated from the reports to

the Public Service Commission and predecessor.

Q. Did you use the very same reports that you did for Exhibit 159?

A. The same reports and same pages.

Q. Is this Table 160 correct?

A. It is.

Q. And it shows the holder capacity of the Consolidated System Companies, 1906 to 1918 of those companies which you have named?

A. As reported, as shown in the reports.

The Master: That does not include New York and Queens, does it? 30980

The Witness: No, that does not include New York and Queens.

Mr. Chambers: There is a note here that excludes that. I offer Table 160 in evidence, being holder capacity of Consolidated System Companies, 1906 to 1918 in M cubic feet.

By Mr. Ransom:

Q. Mr. Goldthwaite, is this the capacity as shown in your Table 160, of the holders shown in your table which is Exhibit AA123, Table 159?

A. Yes, that is the capacity of the same holders shown in the previous exhibit.

Mr. Ransom: This is received, of course, subject to my objection, on the grounds previously stated? 30981

The Master: Yes.

Marked Defendants' Exhibit AA124.

Mr. Chambers: That is all except the ones that we are going to correct.

Adjourned to Wednesday, January 14, 1920, at 9:30 o'clock A. M.

Last Complainant's Exhibit .
Last Defendants' Exhibit AA124.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 30985

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, January 14, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 30986
MR. O'BRIEN, of Counsel for defendant Swann.

Mr. O'Brien: Judge Ransom, have you produced the vouchers in connection with Mr. Livingston's expenditures?

Mr. Ransom: Mr. Livingston is here in pursuance of the request of Mr. O'Brien.

Mr. O'Brien: I want to state, your Honor, that last night I made a request that the vouchers covering Mr. Livingston's expenditures be brought down, and I did not care particularly. I would like to have him here, but I wished to have the 30987
vouchers at the same time.

The Master: Have you the vouchers, Judge Ransom?

Mr. Ransom: The defendants have had these vouchers, which, of course, are in a very large

30988

number, running back into July and August. They know what vouchers they want, and so far as any general miscellaneous request for all the Livingston vouchers—

The Master: Have you any other witnesses?

Mr. O'Brien: I am not ready to go on until I get some papers, your Honor; and I expected Mr. White to be here this morning, of the Standard Oil Company of New Jersey.

Mr. Ransom: Mr. Williams, you mean?

Mr. O'Brien: The secretary. If you will wait two or three minutes I will get him on the phone.

30989

Mr. Ransom: May the record show that Mr. Williams, the purchasing agent of the Standard Oil Company of New Jersey, has been here for several days under subpoena of the representatives of the defendants and has not been put upon the stand.

The Master: I have got to proceed with this case now; I cannot sit here waiting.

Mr. O'Brien: I am not ready to go ahead with him until I get some papers.

The Master: You ought to have your papers here.

Mr. Ransom: Mr. Baker was here yesterday, too.

30990

The Master: Did you ask for Mr. Livingston? Did you ask that he be here?

Mr. O'Brien: Oh, but I asked that he be here with the vouchers and I told Judge Ransom that unless the vouchers covering his expenditures were here I would not want him.

The Master: Why do you want them?

Mr. O'Brien: I want all the vouchers covering expenditures.

The Master: For what purpose?

30991

Mr. O'Brien: For the purpose of examining him as to the manner and cause of these expenditures.

The Master: Each one?

Mr. Ransom: Mr. Baker is not a director of this Consolidated Gas Company and has not any conceivable thing to do with this case; it is an outrage to bring any one like Mr. Baker and Mr. W. G. Rockefeller here and take up their time.

The Master: But I cannot help it; I did not bring them here.

Mr. Ransom: I wish the record to show the utter impropriety of the course that is followed by these defendants. 30992

The Master: Mr. O'Brien, when will you be ready for Mr. Baker?

Mr. O'Brien: Why, I suppose in about fifteen or twenty minutes I will be through with Mr. White, and I will be ready to go ahead with Mr. Baker.

The Master: Then will you go ahead with Mr. Baker?

Mr. O'Brien: Yes.

The Master: I am not going to have these men sitting around all day; we must accommodate the witnesses to some extent. 30993

Mr. Ransom: And they were here yesterday.

Mr. O'Brien: I am going to object to the ravings of Judge Ransom going on this record, your Honor. I do not want to take the time to go into an endless explanation here, but I do not want these comments put on the record. We are going here in this case at the rate of from half past nine to half past six, your Honor, and—

The Master: No, we are not going from half past nine and half past six.

Mr. O'Brien: I am not going to stand it and stand the strain.

The Master: We are not going from half past nine to half past six.

Mr. O'Brien: If the witnesses do not come here I cannot help it.

The Master: No, but the witnesses were here, and I was here at half past nine waiting for you, and it is now twelve minutes to ten.

Mr. Ransom: So was Mr. Baker. Mr. Baker was here.

30995 Mr. O'Brien: It is no time to devote to this case, midnight hours. You did not press the complainants on in this way; you met their convenience, and when they could not get Mr. Carter or Mr. Woods you adjourned the case to give them a chance to get them here. Now, you want to force us on.

The Master: Have you a witness to call?

Mr. O'Brien: There is no use of putting that kind of stuff on this record, and no use dealing that way, because I am going to protest against it.

30996

CHARLES T. WHITE, called as a witness in behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. O'BRIEN:

Q. Mr. White, what is your present occupation?

A. Secretary of the Standard Oil Company of New Jersey.

Q. Do you hold any office in the Standard Oil Company of New York?

A. No, sir.

Q. How long have you been Secretary of the Standard Oil Company of New Jersey?

A. I think—I cannot give you the exact date. It was in December, 1911. I think it was the 9th, if I am not mistaken.

Q. In your official capacity you have the custody of the books and records of the company?

A. Of the transfer books, yes. Let me modify that, Mr. O'Brien. The Guaranty Trust Company has our books now.

The Master: The transfer list? 30998

The Witness: Yes, sir.

Q. Will you state, covering the period from 1905 to date, the holdings of Mr. William Rockefeller in the stock of the Standard Oil Company of New Jersey?

Mr. Ransom: Objected to as incompetent, no bearing on any issue in this case—wholly incompetent.

The Master: Objection sustained. I will let the witness state whether Mr. William Rockefeller was a stockholder, that is all.

Mr. Ransom: At the present time.

The Master: Or has been since 1911. 30999

Mr. Ransom: I object to that.

The Master: Likewise, I will permit the question as to whether he had a small holding or a substantial holding. That is all I will allow.

Mr. O'Brien: And the answer was what?

The Master: You did not ask the question.

Mr. O'Brien: Did your Honor confine that to 1911?

The Master: Well, that is all Mr. White said he knew about.

Q. You have gone over the records with respect to the stockholdings of various people since 1905, have you?

A. I have had the Guaranty Trust Company.

Q. Yes, and you are able to state whether or not from that time on Mr. William Rockefeller has held substantial holdings of stock in the Standard Oil Company of New Jersey?

A. Yes.

Q. And he has?

A. Yes.

31001 Mr. Ransom: That is over my objection and exception.

The Master: Yes.

Q. Can you state the relationship between Anna Rockefeller Prentiss and William Rockefeller?

Mr. Ransom: Objected to as immaterial.

The Master: What is the purpose of it?

Mr. O'Brien: I want to show her holdings.

The Master: To show Mr. Rockefeller's interest?

Mr. O'Brien: Yes.

The Master: Objection sustained. It is sufficient to show his interest that he owns stock.

31002 I will assume that all the members of his family own stock, and all his friends own stock.

Mr. O'Brien: Can't you cover that in a few questions, your Honor?

The Master: No, I will not allow it.

Mr. Ransom: I think that is a pretty violent assumption, if your Honor intends to make such an assumption. I think it is quite immaterial.

The Master: So do I. The point is that Mr. Rockefeller is a trustee of the Consolidated Gas Company and deals very heavily and exclusively

with the Standard Oil of New Jersey. I will permit Mr. O'Brien to put on the record the fact that Mr. Rockefeller has a very substantial interest in the stock of the Standard Oil Company of New Jersey; likewise I will let you prove, if it is a fact of record, that he is a trustee or director of the Standard Oil Company of New Jersey. That is all I will let you show.

Mr. O'Brien: Your Honor, this has its ramifications in various directions, and I wanted to get into the Standard Oil Company of New York, too. There are many directions in which this 31004 testimony leads, and I therefore feel that you ought not to put any such limitation on my question. I want to have the record show that not only does William Rockefeller own a substantial interest in this company, and has owned it during the period covered by the issues in this case, but that his brother, John D. Rockefeller, does, and his sons and his nephews, and his various relations, and that those holdings are very substantial. It will also lead into the Standard Oil Company of New York. Now, you can easily strike it out afterwards if the connection is not there. 31005

The Master: I am not going to take it anyway.

Mr. O'Brien: It only means taking up the time of the Court to hold that in abeyance until we supply the rest of the record.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. How many shares of stock has Mrs. Alta Rockefeller Prentiss had and has she now substantial holdings of stock in the Standard Oil Company of New Jersey?

Mr. Ransom: Objected to as quite immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. And Anna Rockefeller Nash, likewise, has she substantial holdings of stock in the Standard Oil Company of New Jersey, and has she had?

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. And John D. Rockefeller, what are his holdings in the Standard Oil Company of New Jersey at the
31007 present time, and what has he held since 1905?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Have his holdings been substantial holdings?

Mr. Ransom: Objected to on the same grounds.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. And are they today?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. The Rockefeller Foundation, has that corpora-
31008 tion held a substantial amount of stock in the company since 1905, and has it today?

Mr. Ransom: Objected to as quite immaterial.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Has Arthur H. Masten an account in the Standard Oil Company of New Jersey and how far back does that holding of stock extend?

Mr. Ransom: Objected to.

31009

The Master: What has that to do with this case? What has Arthur H. Masten to do with this case?

Mr. O'Brien: He was the Master in the old case, your Honor.

The Master: You are attacking his right to be Master in that way?

Mr. O'Brien: His findings have been referred to by the Master in this case.

The Master: I told you I would not take his findings.

Mr. O'Brien: What?

31010

The Master: I told you I would not take his findings.

Mr. O'Brien: I do not know how far you are influenced by his findings.

The Master: I have already announced that I am not influenced at all; nor am I guided or bound by his findings. In fact I won't read his findings.

Mr. Ransom: I tried to get them in.

Mr. O'Brien: You say you won't read them?

The Master: No.

Mr. O'Brien: I think the record should show you have been referring—

31011

The Master: Mr. Masten is dead, isn't he?

Mr. Ransom: No.

The Master: Is he still alive?

Mr. Ransom: He is.

Mr. O'Brien: You have referred to the decision of the Court of Appeals—

The Master: The United States Supreme Court, I meant.

Mr. O'Brien: Yes.

The Master: If you believe Arthur H. Masten was a stockholder in the Standard Oil Company

of New Jersey and was thereby disqualified from sitting in the original case, you can probably bring that matter before the public in some other form; it will not be done in this case.

Mr. O'Brien: Well, I do not know that. I would not do that injustice to the man, except—

The Master: Then you have no right to ask the question. The insinuation in asking the question is a reflection on Mr. Masten and is unfair.

Mr. O'Brien: No, I am looking for information, and I do not know it—the same as the hold-

31013 ings of various women.

The Master: It is a veiled insinuation.

Mr. Ransom: And a cowardly insinuation against a member of the bar.

The Master: And a cowardly insinuation against a member of the bar; I agree with Judge Ransom in his characterization of the question.

Mr. O'Brien: Your Honor can characterize it as you see fit, but this man has holdings in the Standard Oil of New Jersey, and if he has had for a long period I think we ought to know it.

The Master: I wish I had. Objection sustained.

31014 Mr. O'Brien: I except to the comments made by the Master.

Q. The Laura Spelman Rockefeller Memorial holds a substantial amount of stock, Mr. White, in the Standard Oil Company of New Jersey?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Abbie Aldrich Rockefeller, does she hold a substantial amount of holdings in The Rockefeller Foundation?

Mr. Ransom: I object.

The Master: Objection sustained.

Mr. Ransom: The idea of reading all the names Mr. O'Brien can find there is ridiculous.

Mr. O'Brien: Exception.

Q. Are any shares of stock held by Mr. William R. Addicks in the Standard Oil Company of New Jersey, or any shares held by him on the account of somebody else?

Mr. Ransom: I object to the question.

The Master: I will allow that.

Mr. Ransom: Exception. 31016

A. I do not find any record of Mr. William R. Addicks having owned any shares in the period you ask me about, from 1905 to date.

Q. Mary J. Addicks holds some shares?

A. What is that name?

Q. Mary J. Addicks.

A. Mrs. M. J. Addicks, yes, she has.

Q. Where are the checks sent to?

A. Well, I presume to her, Mr. O'Brien. You did not ask me that. I cannot tell from this record.

Q. Did you bring the title of the account?

A. Yes, "Mrs. M. J. Addicks."

Q. Was it not "Care of W. R. Addicks, Irving 31017
Place"?

A. I could not testify to that.

Q. We will bring that up later; I will have to have the record here, Mr. White. Samuel Sloan?

A. No, sir, nothing.

Q. Samuel Sloan, Junior?

A. Three shares during the entire period.

Q. John W. Sterling?

Mr. Ransom: Objected to as quite immaterial.

The Master: I take it that is Mr. Sterling who is of counsel for the Consolidated Gas?

Mr. Ransom: He was at one time of counsel, yes.

The Master: Isn't he now?

Mr. Ransom: He is dead.

Mr. O'Brien: Yes, and he was more than counsel.

Mr. Ransom: He has been dead for some years.

The Master: I will allow it. Do not give the amounts, Mr. White.

Mr. Ransom: I think it should be limited as
31019 to time.

The Master: Well, from 1905.

Mr. O'Brien: He is on the Executive Committee of this company, your Honor.

The Master: I have made my ruling.

A. John W. Sterling?

Q. Sterling, yes.

A. There is a John W. Sterling, trustee.

The Master: You do not know for whom he was trustee?

The Witness: No, sir.

Q. I will have to bring the book up here; I find this
31020 process is not covering the ground. Mr. White, are you acquainted with the holdings of Mr. Sterling, particularly?

A. No.

Q. Well, will you look that up before you come back on the witness stand and find his individual holdings?

Mr. Ransom: I think it is quite immaterial.

The Master: He says he has not any.

Mr. O'Brien: He does not say that.

The Witness: Yes, I say that.

Mr. O'Brien: He says he had not any.

The Master: He had.

The Witness: Pardon me, I find his name down here below. I find he had 200 shares in 1905, 1906, 1907, 1908, 1909, 1910, 1911 and 1912; 250 in 1913; 150 in 1914; 150 in 1915; 205 in 1916; 205 in 1917; 200 in 1918 and 200 in 1919.

Q. Will you give the holdings of Mr. Sterling as trustee?

Mr. Ransom: Objected to as immaterial and no relevancy on any issue of the case.

The Master: I will allow it. 31022

Mr. Ransom: Exception.

A. John W. Sterling and Central Trust Company, Trustee, 120 in 1905, 120 in 1906, 1907, 1908, 1909 —well, it is the same right straight through to 1902.

The Master: Was Mr. Sterling and the Central Trust Company trustee for somebody?

Q. You can't say for whom they were acting as trustee?

A. No, sir.

Q. You have another name there, John W. Sterling, as trustee?

A. It seems to be so.

The Master: Sterling and Central Trust Co. as trustee. 31023

The Witness: There is John W. Sterling as trustee, and I find no more entries against him. I do not find any record of John W. Sterling, Trustee, having been a stockholder at all.

Q. Well, will you have that looked up? It is another account besides the one held with the Central Trust Co.?

A. Yes, sir.

Q. James A. Stillman or James Stillman.

The Master: Was he a trustee of the Consolidated?

Mr. O'Brien: I do not know, your Honor, whether he is or not.

The Master: Unless you can say that he is, or was—

Mr. O'Brien (interrupting): I am going to ask Mr. Carter that question when Mr. Carter gets on the stand.

The Master: Mr. Carter was on the stand.

31025 Mr. O'Brien: You will take it subject to connection?

The Master: I won't take it subject to connection. You know who these trustees were during all the years.

Mr. O'Brien: I want to show those people that have common holdings in the two companies, your Honor.

The Master: I am not going to allow it.

Mr. O'Brien: Also in the National City Bank.

The Master: I am not going to allow it.

Mr. O'Brien: I propose to put Mr. Carter on the stand and find out just how many of these

31026 substantial holders of stock in the Standard Oil Company of New Jersey are holders of stock in the Consolidated Gas Co.

The Master: I won't take it.

Mr. O'Brien: You will allow me to make a record.

The Master: I am sustaining these objections.

Mr. O'Brien: I take an exception to your Honor's ruling.

Q. I ask now what have been the holdings, and what are today the holdings of C. M. Higgins?

Mr. Ransom: Objected to.

The Master: What connection has that with the Consolidated?

Mr. Ransom: One of the defendant witnesses.

Mr. O'Brien: Well, that remains to be seen, when I get him on the stand. He was a witness in this case, he sells oil to the gas companies and it is very material to find out what connections there are between the Standard Oil Co. of New York and the Standard Oil Co. of New Jersey.

The Master: What do you understand this to be, a roving expedition, or a trial of a lawsuit? 31028

Mr. O'Brien: I am going to answer your Honor's question.

The Master: Objection sustained.

Mr. O'Brien: I wish your Honor would make your rulings without making those comments. Exception.

Q. Do you know Mr. C. M. Higgins?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Q. Do you know he is an officer of the Standard Oil Co. of New York?

Mr. Ransom: Objected to, immaterial.

The Master: Objection sustained. 31029

Mr. O'Brien: Your Honor rules that out, too?

The Master: Yes. Mr. Higgins told us who he was.

Q. Does Mr. Higgins hold any office in the Standard Oil Co. of New Jersey?

A. No, sir.

The Master: Suppose Mr. Rockefeller owned all the stock of the Standard Oil Company of New Jersey and all the stock of the Consolidated Gas Company of New York and all the stock of the National City Bank and all the stock

31030 of the National City Company and everything else worth while around New York, would he for that reason, or would this complainant company for that reason be required to sell its gas for less than it cost to make, Mr. O'Brien?

Mr. O'Brien: That question answers itself, your Honor, but I do not need to—

The Master: Then it probably answers a lot of the testimony you are going to offer.

Mr. O'Brien: Well, then, I do not care to answer these questions. The question is, as you have been told in this case by some witness, is
31031 this, among many questions, Where could the gas oil be bought the cheapest.

The Master: Yes.

Mr. O'Brien: And does the company suffer in the expense of gas oil to a fraction of a cent.

The Master: Yes.

Mr. O'Brien: By taking it from one interest rather than the other.

The Master: Yes. Well, you have shown that at least one trustee, and we will assume that an influential trustee of the Consolidated Gas Co. is a very substantial holder of stock in the Standard Oil Co. You have, probably, a basis for arguing
31032 the affiliations existing between the two companies, and you probably have a basis for arguing that Mr. Addicks did not get the best possible price he could, but that does not show me the price he could have obtained somewhere else, or where he could have gotten it.

Mr. O'Brien: I do not seem to be making much of an impression on your Honor anyway, and what is the use of my arguing it with you? I have got my notion of trying this case. The witnesses have told you the effect of a very small fraction in the cost of gas oil.

31033

The Master: I appreciate that.

Mr. O'Brien: We have a company now, this particular company, getting its gas oil from one company.

The Master: Yes, I have had that.

Mr. O'Brien: Which supplies no other gas company, so far as we know up to the present time, which oil company up to the present time, so far as we know, has not opened up any competition with other companies.

The Master: I have all that in mind, and yet I have still to see or hear anything which would indicate that the Standard Oil Co. could have sold 31034
it for less if it were not for the interest that these directors had in these two companies, or because of their close affiliations.

Mr. O'Brien: Your Honor, I think should keep an open mind on this case.

The Master: I have an open mind.

Mr. O'Brien: Until this case is closed.

The Master: That is why I try to find out from you or these defendants how much you say the Standard Oil Co. should have charged for gas oil from time to time, and why you say so.

Mr. O'Brien: I want to say this, and it is clear in the case notwithstanding the trend of your 31035
mind; we have here a situation where a company practically had a monopoly, an interest with practically a monopoly of gas oil.

The Master: Yes.

Mr. O'Brien: Well, it might be boosting the price of gas oil even, to the outer world and the layman who does not know, an infinitesimal degree, and yet put a statute out of business.

The Master: Yes.

Mr. O'Brien: They have it in the palm of their hand with the monopoly by just adding a hair on

31036 the price of oil to create a situation where possibly a statute would be declared unconstitutional.

The Master: Don't you see I understand you perfectly? You are trying to show in this case what other men at other times have shown or tried to show, namely, that there is a danger in large holdings and in monopolies. But that is not the question in this case. If the Standard Oil Company of New Jersey is a monopoly and the fact is, as claimed by the complainant in this case, that that is the only source of supply for their needs, and the fact is that they are charging this
31037 gas company more than you say they ought to charge, that is the question in this case, not these ramifications and these public notions that you and I want to cure.

Mr. O'Brien: That is not the case at all, but the whole question of oil, the question of the two systems of making gas, the coal gas system or the water gas system that needs a whole lot of oil comes into play.

The Master: I know that.

Mr. O'Brien: You do not need much imagination to conceive the vital effect which this whole oil situation has upon the gas industry.

31038 The Master: I have that in mind.

Mr. O'Brien: In laying the foundations there are certain matters that we can bring in, and we can put in this case enough testimony to make the duty clear upon the plaintiff's part to come in and clear this up and show, and they have got to go mighty far to show, that they are not using their domination and control of the oil on the one hand to make money out of both companies, the gas industry and the oil industry. Then again, if there are dominant interests in a gas company who have tremendously large holdings

31039

in oil companies, it is easy to see why they would determine to make gas by the water gas system, which requires possibly as much as three and a half to four gallons of oil per thousand cubic feet, rather than to take up another method of making gas that uses very little oil.

The Master: But I have that in mind perfectly.

Mr. O'Brien: Why does your Honor limit the extent of my question? The question reaches out in half a dozen different directions.

The Master: No, it stays right in this case, and I am going to keep it within the confines of this case and within the issues in this case. I 31040
have had in mind, because of your cross-examination of Mr. Addicks and other witnesses, your contention that in the light of the cost of oil and the situation with reference to the purchasing of oil, they ought to make more coal gas. I likewise have in mind Mr. Woods' statement under oath that the reason they did not make more coal gas is because it cost them too much because they cannot get rid of their coke. I suppose you say that is not so. I am waiting to hear your proof on that. Now, while—

Mr. O'Brien: I know, but your Honor cannot take every little chapter in this story as we go 31041
along and give us your findings as we go along.

The Master: But there are some chapters that do not go into the story.

Mr. O'Brien: You cannot arrive at your findings as we go along and say "I am against you on that, I have found so and so." I say it is your duty to keep your mind open in this case.

The Master: I am keeping it open, but it is absolutely closed as to this getting matters into this case that do not belong here.

31042

Mr. O'Brien: Well, I think your Honor—I would not say you have intended to be unfair with me, but I think when I put a question, a preliminary question to lay the foundations for further questions, it is very unfair, like in the case of Mr. Masten. I yield to nobody in my desire to protect anybody's reputation. I have found a lot of names on the stock list here of this company, and I would not cast any innuendo against anybody, and yet I feel it my duty, if I find various names on that, to bring out the fact, and glad to see the matter dismissed with an explanation that
31043 the holdings of that gentleman only extended over some period maybe long after he was connected with this case.

The Master: What I have tried to do in this argument with you is to give you the theory upon which I am barring out a line of testimony. I cannot do any more than that.

Mr. O'Brien: I just find fault with your Honor for not allowing me to make a sufficient basis for the objection, so that on appeal the record will have enough in it.

The Master: I have not stopped you from doing that. I am simply explaining why I am
31044 ruling on the questions put, I am letting you ask the questions.

Mr. O'Brien: You know in regard to common ownerships I have to get a start with one company or another, and I am going to ask Mr. Carter about various people, and I would like to find out—

The Master: But my ruling is, Mr. O'Brien, that I will not take proof of common ownerships of stock.

Mr. O'Brien: Irrespective of how substantial they are?

31045

The Master: Yes.

Mr. O'Brien: Common ownerships of stock in the Standard Oil Company of New Jersey and the Consolidated Gas Company?

The Master: Yes, I am not going to take that.

Mr. O'Brien: Your Honor will make that ruling and I will understand it.

The Master: That is why I am explaining it to you. It is perfectly simple for me to sit here and make rulings without giving you an explanation of why I am doing it, but I thought I would be helping you to give you the operation of my mind.

31046

Mr. O'Brien: Well, where I perceive your rulings, I am not going to take up a whole lot of time, I will only seek to put as much on the record as is necessary to show it.

The Master: That is what I want.

Mr. O'Brien: For instance, I think it is important for us to know how far the Harkness and Flagler interests extend into the Consolidated Gas Company.

The Master: Well, I do not.

Mr. O'Brien: They being substantial holders of stock in the Standard Oil Company of New Jersey. Likewise with Lewis Cass Ledyard and

31047

Payne Whitney, who are dominant stockholders in the Northern Finance Company, which has 40,000 shares of stock in the Standard Oil Company of New Jersey, and wouldn't it be perfectly material and proper for me to ask Mr. Carter on the stand how far is Lewis Cass Ledyard and Payne Whitney and the others who hold that 40,000 shares of stock in the Standard Oil Company interested in the Consolidated Gas Company?

31048

The Master: I have tried to explain to you, Mr. O'Brien, that if you wanted to prove that a majority of the stock of the Standard Oil Company was held by a majority of the stockholders of the Consolidated Gas Company, I would still say, "Show me what difference that makes in the price of oil, how you could have gotten it any cheaper because they were in control of the Standard Oil Company and in control of the Consolidated Gas Company." I shall rule that they were under no duty to sell their oil to the Consolidated Gas Company for less than they could get from
31049 somebody else, that they did not have to make a present to the Consolidated Gas Company of anything. That is my ruling.

Mr. O'Brien: Of course, your Honor, you don't go very far in that.

The Master: I go the limit.

Mr. O'Brien: Because if they have a monopoly they might get more than what is the fair price.

The Master: But that is the question. What is the fair price?

Mr. O'Brien: Well, they make the price for that gas oil.

The Master: All right then.

31050 Mr. O'Brien: And if they roll up dividends, as we will show, of some fifty million dollar dividends, I think it was, the Standard Oil Company of New Jersey paid last year—

The Master: I am not going into that.

Mr. O'Brien: But that has a bearing on this situation.

The Master: But I won't go into it.

Mr. O'Brien: All I ask under the circumstances is that you allow me to make a record.

The Master: If you can show me that crude oil was dropping, that the demand for gas oil was

dropping and that the demand for naphtha was off, and that the crude oil was climbing up on them and it was not worth as a matter of fact anywhere near what they were holding up, as you say they did, the Consolidated Gas Company, for it will make a very strong impression on my mind, but the mere fact that there are intercorporate relations and that one or more stockholders or a great number of them own stock in both companies makes no impression on my mind, and I won't receive it, you will have to show me something more substantial than that. 31052

Mr. O'Brien: Well, then, meeting your Honor's contention, I think that these matters should be placed upon the record, and if before the end of the case there isn't any connection made that meets with your view of what is material and helpful, you could rule it out.

The Master: That is just what I won't do. I am not going to have this record spread all over with information that might be of interest to newspaper readers but not to this Court. That is just what I won't do.

Q. Does Frank A. Vanderlip hold any stock in your company? 31053

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained. I do not recall that Mr. Vanderlip is a director and trustee of the Consolidated Gas Company. One of the gentlemen over there indicates that he was at some time. Is that so, Mr. Ransom?

Mr. Ransom: He is a trustee.

The Master: I am informed by counsel that he is a trustee. That being so I will allow the question. In any instance where a man is or was a trustee I will allow it.

A. He is not, nor has he been during that period.

The Master: He is not a stockholder of the Standard?

A. No, sir.

Q. James Stillman, or James A. Stillman?

A. James Stillman in 1905 had 928 shares, and in 1906, 928 shares. It is now the Estate of James Stillman, 78 shares, from 1907 to date.

The Master: Which would indicate that on Mr. Stillman's death the estate sold or disposed of the stock.

31055 The Witness: Yes, sir. James A. Stillman is not a stockholder nor has he been during this period.

Q. Allen G. Hoyt, 55 Wall Street?

The Master: Who is he?

Mr. Ransom: I object to that as immaterial.

Mr. O'Brien: I hope yet to find out his connection with W. Greeley Hoyt. I am going to ask the witness.

The Master: W. Greeley Hoyt, who is he?

Mr. O'Brien: He is an officer of one of the affiliated companies.

The Master: Objection sustained.

31056 Q. Do you know Mr. W. Greeley Hoyt?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception. I propose to ask where that the check is sent to for A. G. Hoyt's holdings, and if the witness knows what relation he is to W. G. Hoyt.

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained. Mr. O'Brien, are you in a position to tell me what your claim is as to what would have been a fair price for oil in 1918 and 1919?

31057

Mr. O'Brien: 1918—five cents.

The Master: You claim it should be five cents?

Mr. O'Brien: It has been sold for three cents this year in some parts of the country.

The Master: Where, at the wells?

Mr. O'Brien: We won't get anywhere with this discussion.

The Master: I am talking about New York Harbor. What do you say it should be?

Mr. O'Brien: I am meeting my proof in the way it should be met, your Honor.

The Master: What do you say it ought to have been in 1919?

31058

Mr. O'Brien: I am going to discuss this, your Honor. Our case is going in, and in spite of the statements made by some people as to nine cents, and all that, there is a whole lot to be said on that situation that is different?

The Master: All right.

Mr. O'Brien: The burden of proof anyway in this case is not on the defendant. I have constantly reiterated that—

The Master: I understand that.

Mr. O'Brien: We are not compelled to come in here and prove the complainant's case, if they produce just the faintest outlines of a case, and then have us come in as defendants and give the proof, that is not required by the United States Supreme Court.

31059

The Master: But other witnesses have testified to certain prices. I haven't got them in mind now.

Mr. O'Brien: The only witness they put on the stand up to the time of the defendants' case was Mr. Carter—

The Master: Mr. Addicks.

Mr. O'Brien: Mr. Carter's testimony did not show a fair and earnest effort to get competition, and did not show that he was getting oil as cheap as other companies.

The Master: You mean Mr. Addicks?

Mr. O'Brien: Mr. Addicks.

Q. Has J. P. Morgan & Co. an account in your company?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

31061 Q. Is Jesup & Lamont a stock brokerage house, Mr. White?

Mr. Ransom: Objected to as immaterial and a waste of time.

The Master: Objection sustained.

Q. Do you know the Jesup & Lamont firm in your building?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. What is their business?

Mr. Ransom: Objected to.

The Master: Objection sustained.

31062 Mr. O'Brien: Exception.

Q. What are their holdings of stock in this company?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. What are the holdings of Mrs. Edith Rockefeller McCormack of Chicago?

Mr. Ransom: I object to that as immaterial.

The Master: Objection sustained.

Mr. O'Brien. Exception.

Q. The Herbert L. Pratt Estate?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Northern Finance Corporation?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. John H. Flagler, or any branches of the Flagler family?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception. 31064

Q. Edward S. Harkness, and other members of the Harkness family, what are their holdings and what have they been during the period mentioned?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Colgate Hoyt, and Colgate Hoyt, Jr.?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

The Master: If any instance you know that any of these people about whom you inquire is or has been a trustee, I will allow it. 31065

Mr. O'Brien: I don't know.

The Master: I am limiting the inquiry as to trustees.

Mr. O'Brien: I might state as to the last two men that they are also directors as far as I can learn, of the United States Cast Iron Foundry Company.

Q. John D. Rockefeller, Jr.?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Percy A. Rockefeller?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Mr. Ransom: I am willing to consider that the entire social register has been asked and objected to.

The Master: How many stockholders have you got in the Standard Oil of New Jersey, Mr. White?

A. In the neighborhood of 8,000.

31067 By Mr. Ransom:

Q. 8,000 shareholders?

A. Yes, sir.

By Mr. O'Brien:

Q. I hand you a paper and ask you if you can identify that announcement made in The New York Sun of that date?

Mr. Ransom: I object to that as immaterial and improper.

The Master: Let the witness look at the paper. I have not seen it officially, I have glanced at it but I don't know what is in it. It is apparently a newspaper clipping. I will allow the witness to

31068 say if he identifies it.

Mr. O'Brien: I may say that that Mexican Oil proposition has vanished from the papers today, your Honor.

The Witness: What is your question?

Q. Do you identify that advertisement, Mr. White?

Mr. Ransom: I object to that as immaterial.

The Master: I will allow him to say whether he identifies it.

A. Yes, I can recall it.

Q. That was inserted in that paper by your company?

Mr. Ransom: Objected to as immaterial.

The Master: I will allow that.

A. Why, it was put in by J. P. Morgan & Co., signed by them.

Q. Did you turn over to J. P. Morgan & Co. the statement of the finances of the Standard Oil Company of New Jersey that are set forth in that advertisement?

Mr. Ransom: Objected to as incompetent, irrelevant and immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception. 31070

Q. Does the statement there summarize the earnings before deducting Federal taxes, Federal taxes paid and accrued, earnings after deducting Federal taxes, and dividends paid for the years 1912 to 1918, inclusive, of the Standard Oil Company of New Jersey?

Mr. Ransom: I object to that as immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception. I will ask that it be marked for identification.

The Master: No, I won't permit it to be marked for identification.

Mr. Ransom: I object to its being marked. 31071

The Master: The stenographer is instructed not to mark it; I won't let it be marked.

Mr. O'Brien: I offer for identification the advertisement appearing in The Evening Sun of Friday, October 3, 1919, entitled—

Mr. Ransom: I object to any further reading of it.

The Master: I will let Mr. O'Brien give the title. I am not going to let him state the contents, just enough to identify it.

Mr. O'Brien: Entitled, "Ninety-eight million three hundred and thirty-eight thousand three hundred Standard Oil Company, incorporated in New Jersey, cumulative seven per cent non-voting preferred stock," in which is set forth the dividends paid from 1912 to 1918.

The Master: That is sufficient identification.

Q. As to the holdings in the Standard Oil Company of New York of the Rockefeller interests, can you tell us about that?

A. I don't know anything about that.

31073 The Master: You don't know anything about it whatever?

The Witness: I don't know anything about it.

Q. You would not say that they have not this same grouping of interests, large holdings in the Standard Oil Company of New York?

A. I would not.

The Master: You don't know anything about it?

The Witness: Not any more than you do.

Q. Now, the stock list of the present company contains many entries carried forward from the ledger of the Standard Oil Company. What does that indicate

31074 as to the list of holdings? Does that mean that the account so inscribed held stock as of a certain date?

Mr. Ransom: Objected to as immaterial and incompetent.

The Master: I will allow that. Does the transfer ledger show the holdings from time to time?

Mr. O'Brien: It goes back to a certain date, at which they are taken over from the ledger of the Standard Oil Company. That is why, as to Mr. Masten and others, I wanted to bring out the holdings.

The Witness: That was transferred.

Q. When was that done?

A. 1905.

Q. Then any entry in the transfer list where it says, "Carried forward from the Standard Oil ledger" would indicate that the holdings extended back to 1905?

A. I don't think you have made that quite clear to me.

Q. Where, in the transfer list of the Guaranty Trust Company there is entered in the account showing the holdings of a given person the entry, "Carried forward from Standard Oil ledger," does that 31076
indicate that the holdings of the person in question extended back to 1905?

A. Yes, sir, back of that. It is just like transferring from one old ledger to another.

Q. As of what date in 1905?

A. I think it was May 1, 1905.

The Master: Is that when the dissolution took place?

The Witness: No, sir. We used the card system instead of a ledger, we just transferred the cards, we just said so many shares from old ledger.

Q. Mr. White, do you know enough about the business in gas oil of the Standard Oil Company of New 31077
Jersey to be able to state the gas companies that they sell oil to in New York or in New Jersey?

A. I know nothing of that.

Mr. O'Brien: That is all.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Do the 8,000 stockholders include the holders of the preferred stock or is that number merely the holders of the common stock?

A. I should qualify that statement. I am not in position to know exactly the number of preferred

stockholders, but I think it is something like 11,000 of the preferred. I was answering as to the common stock.

The Master: 8,000 stockholders of the common stock?

The Witness: Yes, sir. The preferred stock is non-voting.

By Mr. O'Brien:

Q. Have you got the holdings of George F. Baker there?

A. Yes, sir.

31079 Q. Is he a substantial stockholder in your company?

A. He is not a stockholder now.

The Master: When did he cease to be?

The Witness: In 1913.

The Master: Up to that time did he have a substantial amount?

The Witness: 100 shares.

Q. Will you state, Mr. White, the holdings from year to year of William Rockefeller from 1905 down to date?

The Master: I said I would not take that. I understood the witness to say he was a large

31080 stockholder, wasn't he?

The Witness: A substantial stockholder.

The Master: I am not interested whether he had 900 shares or 3,700 shares. He is a large and substantial stockholder. That is all you want.

Mr. O'Brien: Exception.

By Mr. Ransom:

Q. How many shares does this Mrs. M. J. Addicks own?

A. 15 shares, from 1905 to date.

The Master: We may be able to save Mr. White from coming back. Give Mr. O'Brien the address of Mrs. Addicks. Find out from Mr. Addicks whether he knows the address of Mrs. M. J. Addicks, and whether she is related to him. That may save Mr. White from coming back.

Mr. Ranom: Margaret J. Addicks is the wife of Walter R. Addicks.

The Master: Is that the witness who was on the stand?

Mr. Ransom: Yes, sir.

The Master: It is stipulated on the record that 31082
Margaret J. Addicks is the wife of Walter R. Addicks, an officer of the Consolidated Gas Co.

Mr. O'Brien: And that the check is sent in care of W. R. Addicks, 4 Irving Place?

The Witness: I can't say from this.

The Master: What is the difference? What you want is to show the connection.

(Witness excused.)

GEORGE F. BAKER, JR., called as a witness on behalf of the defendants, being duly sworn, testified as 31083
follows:

DIRECT-EXAMINATION BY MR. O'BRIEN:

Q. Where do you reside, Mr. Baker?
A. New York.
Q. Do you live with your father?
A. No, I have a house next to him.
Q. You are the son of George F. Baker?
A. I am.
Q. Is your father in the City?
A. He is not.

Q. When did he go away?

A. About ten days ago.

Q. Do you know when he will return to the City?

A. In the early spring, I should judge, as is his custom.

Q. Where is he now located?

A. He is at Jekyl Island, Georgia.

Q. Have you discussed this case at all with him?

A. I have not.

Q. You don't know whether he has followed the case, kept acquainted with the developments of the
31085 trial?

A. I do not.

Q. You don't know whether he got one of the twelve copies of minutes purchased by the complainant company?

A. I do not.

The Master: Do you know whether the complainant company purchased twelve copies?

The Witness: I do not.

Q. Mr. Baker, are you an officer in any Railroad Companies that handle coal?

Mr. Ransom: Objected to. This witness is not an officer or director or trustee of the Con-
31086 solidated Gas Co. It is quite immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Are you a director of the Delaware, Lackawanna & Western Coal Co.?

Mr. Ransom: I object to that as immaterial.

The Master: I will modify my ruling on that. I will allow that.

Mr. Ransom: This witness is not connected with the Consolidated.

The Master: His father might be interested in company with the son as the office holder. I will allow that.

Mr. Ransom: Exception.

A. The question was the coal company or the railroad company?

Q. The coal company.

A. I am not.

Q. Does the Delaware, Lackawanna & Western Railroad Co. control the Delaware, Lackawanna & Western Coal Co.?

Mr. Ransom: Objected to as incompetent and 31088
immaterial.

The Master: I will allow that.

Mr. Ransom: Exception.

A. No, sir.

Q. What Coal Companies does the Delaware, Lackawanna & Western Railroad Co. control?

Mr. Ransom: Objected to as immaterial.

The Master: I will allow it.

A. None that I know of.

Q. Haven't they any coal interests?

A. They own coal themselves.

Q. Where?

A. Pennsylvania. 31089

Q. Has it any particular name, the company or the holdings?

A. The Delaware, Lackawanna & Western Railroad Co. owns it.

Q. The mines?

A. The mines.

Q. Do they operate the mines?

A. They operate the mines.

Q. To whom do they sell the coal?

Mr. Ransom: I object to that as immaterial.

The Master: Objection sustained. Do you want me to get a list of all their customers in the world?

Mr. O'Brien: That is *reductio ad absurdum*. I will put the question in another form.

The Master: You mean whether they have sales agents through whom they sell?

Q. I assume that they sell it entirely to one company, do they?

A. Well, I don't believe I can testify as to that.

Q. Do they sell it themselves directly to customers, or have they got a company, a sales company to which they sell all of the output of the mines they own?

31091

A. The Delaware, Lackawanna & Western Coal Co., to the best of my knowledge and belief, handles the greater portion of their output. Whether it handles 100 per cent of it or not, I cannot say.

The Master: Is that a company controlled by them, that sales company?

The Witness: He asked me that before. It is not.

Q. Is your father a director in the Delaware, Lackawanna & Western Railroad Company?

31092

Mr. Ransom: Objected to as incompetent.

The Master: I will allow it.

A. I don't see how I can testify as to that.

Q. What do you mean by that, Mr. Baker?

A. How can I testify under oath that he is?

The Master: Are you a director of the Delaware, Lackawanna & Western, Mr. Baker?

The Witness: I am.

The Master: Does he sit in the board meetings?

The Witness: He does.

The Master: As a director?

The Witness: My father does, yes; at the last meeting he was there.

Q. And he is chairman of the Board of the First National Bank?

A. He is.

Q. And you are vice president and director of the First National Bank?

Mr. Ransom: Objected to as immaterial

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Is your father a director in the Erie Railroad?

A. I cannot testify as to that. 31094

Q. I hand you a copy of "Directory of Directors" for 1920, and ask you if that refreshes your memory as to the corporations in which your father and yourself are officers?

Mr. Ransom: I object to that as incompetent.

The Master: No, I will let Mr. Baker say whether after looking at this book he knows any more than he did before.

A. I don't know any more about it after looking at this than I did before.

Q. Will you look at it, Mr. Baker, don't be afraid of it.

The Master: He might look at it for a year— 31095

Mr. O'Brien: He didn't look at it.

A. I looked at it with respect to the question you asked me. You asked me if he was a director in the Erie Railroad. I looked at that and I saw that he is down here as being a director in the Erie Railroad, and then I said I didn't know any more now than I knew before.

Q. Would you say whether or not he is a director?

The Master: The witness has already said he doesn't know, he knows no more about it, he says, than he knew before looking at that record.

The Witness: I didn't mean to say that. I said I didn't know any more than before I looked at this.

The Master: All you can say is what somebody told you or what you have heard?

The Witness: To the best of my knowledge and belief I can testify; but I cannot testify to the fact.

Q. What is your best knowledge and belief as to your father being a director of the Erie Railroad?

A. I believe he is.

31097 The Master: I believe he is, too, so you don't know much more than I do.

Q. Is your father a director of the Lehigh Valley & Wilkesbarre Coal Company?

A. The same kind of an answer would apply on that.

Q. You believe he is?

A. I believe he is.

Q. And of the Lehigh Valley Railroad Co.?

A. The same kind of an answer would apply; I believe he is.

Q. The New York Edison Co.?

A. I cannot say as to that.

31098 Q. And the New York Mutual Gas Light Co.?

Mr. Ransom: I object to that as immaterial.

The Master: I will allow it.

A. I cannot say.

Q. The Pennsylvania Coal Co.?

A. I should not think he was; I haven't heard of it. It is not down there, is it?

Q. Yes.

A. I don't believe he is.

Q. The Philadelphia & Reading Coal & Iron Company, is he not a director of that company?

A. He is of the railroad; whether he is of the Coal & Iron Company I am not certain.

Q. The United Electric Light & Power Company?

Mr. Ransom: Objected to as quite immaterial.

The Master: Sustained.

Mr. O'Brien: Exception.

Q. Do you hold any stock in the Standard Oil Company of New Jersey directly or through anybody else, Mr. Baker?

Mr. Ransom: Objected to as immaterial.

The Master: I will allow it, and I will allow it on the theory that there may be an interest of 31100 George W. Baker because his son owns some stock.

A. I do not.

Q. Have you had at any time?

A. I have not.

Q. Do you hold any stock in the Consolidated Gas Company?

A. I do not.

Q. Have you had at any time?

A. I have not.

Q. Or any of its affiliated companies?

A. No, I have not.

Mr. O'Brien: That is all. 31101

CROSS-EXAMINATION BY MR. RANSOM:

Q. How old is your father?

A. My father is eighty on his next birthday.

Q. Has it been his practice for many years to go to Jekyl Island, or some point in the south to spend the rigorous months of the winter?

A. Yes, it has.

Mr. Ransom: That is all.

Mr. O'Brien: I would like to have it made clear on the record whether the complainant is going to compel me to issue a subpoena *duces*

31102 *tecum* in connection with the vouchers covering the expenditures made by Mr. Livingston?

The Master: No, the Consolidated Gas Company cannot require you to issue a subpoena *duces tecum*. I will direct them to produce what you would have a right to require them to produce by subpoena if you make more definite just what you want. But I am not going to bring down all the vouchers of all the years, because I think it is entirely too indefinite.

Mr. Ransom: They have had these vouchers, the numbers and amounts.

31103 The Master: You want to specify what you want, and I will direct them to bring them down. I would not enforce a subpoena; I would not do it. You have been analyzing these vouchers; you know what vouchers you want.

Mr. Ransom: As a matter of fact they have the 1918 vouchers now.

The Master: You have the 1918 vouchers now?

Mr. O'Brien: I have none.

Mr. Ransom: The defendants' representatives up there have.

The Master: You specify what you want, what vouchers you want to attack, and I will get them for you.

31104

Mr. Chambers: I submit Mr. Goldthwaite for cross-examination.

The Master: You are not finished with him yet?

Mr. Chambers: I am finished with those tables that he testified about.

The Master: I am not going to do that.

Mr. Chambers: If the Master please, we were ready with those tables and counsel objected to that one company, which he said was immaterial, and was immaterial.

31105

The Master: No, it was a proper objection.

Mr. Chambers: Well, he suggested that what was in there about that company was immaterial, and it would not have done any harm to let that in.

Mr. Ransom: That would have jumbled the situation.

Mr. Chambers: No such thing at all.

The Master: Do not let us get into this discussion.

Mr. Chambers: I submit him for cross-examination, and if your Honor is going to hold we have to correct those tables, then we need a 31106
half a day, Mr. Goldthwaite does, and maybe more to do it.

The Master: Then call some other witness.

Mr. Chambers: I would like to have him finish up with Mr. Goldthwaite.

The Master: If he cannot you call some other witness.

Mr. Chambers: You are not going to compel him to cross-examine?

The Master: Why should I compel him?

Mr. Ransom: They have some other tables of this same nature; they ought to put them in before we cross-examine. We want to see what 31107
kind of a house Jack is building here.

The Master: Yes, you have a right to that.

Mr. Chambers: I submit him for cross-examination on the tables that are now complete and are in.

Mr. O'Brien: Your Honor announced that you would put the witnesses on and take them off.

The Master: Yes, I know.

Mr. Ransom: That is on a different branch of the case. Capital and operating expenses are two different things.

Mr. Chambers: I cannot see as to these two tables that are in why counsel cannot examine.

The Master: It would be a pure waste of time, that is the reason.

Mr. Chambers: They are independent tables.

Mr. Ransom: How many others are there?

Mr. Chambers: The other tables? Several.

The Master: Haven't you got anybody else; can't you go ahead with something else?

Mr. Chambers: Yes, I can call Mr. Pyle, I suppose.

31109 The Master: Do that.

CLIFFORD H. PYLE, called as a witness in behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Pyle, from what university did you graduate?

A. Purdue University.

Q. Where is that?

31110 A. Lafayette, Indiana.

Q. And you graduated from that university when?

A. In 1912, June.

Q. With what degree?

A. B. S. and E. E.

The Master: Electrical engineer?

The Witness: Electrical engineering.

Q. After you left that university where did you go?

A. I went with the B. R. T. in electrical and mechanical engineering work.

Q. You mean the Brooklyn Rapid Transit Company, the company over in Brooklyn?

A. Yes, sir.

Q. How long did you stay there?

A. I stayed there until December, 1913.

Q. And with the Brooklyn Rapid Transit Company, what business did you engage in?

A. Electrical and mechanical engineering, mostly testing.

Q. After you left the Brooklyn Rapid Transit Railroad Company, where did you go?

A. I went with the Public Service Commission, First District.

Q And what were your duties there?

A. We were doing in the electrical engineer's office accounting for the cost and supervising the installation of the equipment of the new subways. 31112

Q. After you left the Public Service Commission where did you go?

A. I went to Detroit with the Bureau of Aircraft Production.

Q. What particular line were you in with the Bureau of Aircraft Production?

A. Cost accounting on aeroplanes.

Q. And did you compute the cost of aeroplanes?

A. Yes. That is, not I myself but—

Q. The Bureau did?

A. The Bureau did. 31113

Q. And you engaged in it?

A. Engaged in it.

Q. You were working then for the United States Government?

A. For the War Department.

Q. Just what kind of cost of production of aeroplanes?

A. They were taking the cost in two divisions, the cost of the total plane and the cost of the finished parts. They were the ultimate objects.

Q. And your whole time was devoted to ascertaining the cost of these aeroplanes?

A. Ascertaining the cost.

Q. After you left the Bureau of Aircraft Production in Detroit, where did you go?

A. I came to New York and was employed by Mr. Milo R. Maltbie.

Q. And have been employed by him ever since?

A. Ever since.

Mr. Ransom: When was that?

The Witness: That was July of last year.

31115 Q. 1919?

A. 1919.

Q. What cases have you worked on since you have been with Mr. Maltbie?

A. Well, I have worked on this Consolidated Gas case, worked on the Utica Gas & Electric, worked on the Pavilion Gas case.

Q. Did you work on the Albany case?

A. Not that I remember.

Q. Any other?

A. Well, there may have been, but I do not recall them right at present.

Q. What kind of work were you doing, say in the

31116 Pavilion case?

A. We were making up tables and statistics.

Q. Of costs?

A. Of various costs; various figures, at least.

Q. In the other cases what were you doing, outside of the Consolidated case?

A. Similar work, tabulations, costs and figures.

Q. You prepared under Mr. Maltbie's and Mr. Hine's direction some table—what we call 156. You worked on that?

A. Yes, sir.

Q. In the preparation of that table what data did you use, Mr. Pyle?

Mr. Ransom: I object as immaterial and incompetent, on the ground that the witness has not been qualified. If it is intended to use him with respect to cost figures he has not been qualified.

The Master: Objection overruled. I do not know what the table is.

Mr. Ransom: At the proper time I would like to cross-examine as to his qualifications.

The Master: Overruled.

Mr. Ransom: Exception.

A. The sources of the table were the reports made to the Public Service Commission, the original reports 31118
as filed in the Public Service Commission's office, of the following companies: Consolidated Company, Astoria Light, Heat & Power Company, New Amsterdam Gas Company, Central Union Gas Company, Standard Gas Light Company, New York Mutual Gas Light Company, Northern Union Gas Light Company, and certain typewritten reports of the Westchester Lighting Company.

Mr. Ransom: Did you say the Central Union?

The Witness: Yes, Central Union.

Q. These reports that you used were the reports that are on file with the Public Service Commission, First District? 31119

A. Yes.

Q. The first report you used was the report for 1906-1907, which ended June 30th, 1907?

A. Yes, sir.

The Master: Of each of these companies:

Q. Of each of these companies?

A. Yes, sir.

Q. And reports made to the Commissioner of Gas and Electricity?

A. To the Commissioner of Gas and Electricity.

Q. The predecessor of the Public Service Commission?

A. Yes, sir.

Q. And you used the original reports?

A. The original reports.

Q. What page did you use, Mr. Pyle, of that?

A. Page 28, for 1906-1907.

Q. The 1907 reports of each of the companies, what page did you use?

A. Page 55G.

Q. And the report for 1908?

31121 A. The report for 1908, page 49, and for the Westchester Lighting Company the report to the Commission, Sheet 2.

Q. And in 1909?

A. In 1909, page 55; except for the Westchester Lighting Company, and the pages were not numbered on that. That was a small report.

By the Master:

Q. What sheet was it?

A. There were just two or three typewritten sheets.

Q. A statement rather than a report?

A. Yes, a report to the other district.

By Mr. Chambers:

31122 Q. The 1910 report?

A. Page 55, except for the Westchester Lighting Company; and page 1 of the Westchester Lighting Company.

Q. 1911 to 1918, inclusive.

A. That is page 65, except for the Westchester Lighting Company, and that is page 1.

Mr. Chambers: I now offer in evidence so much of these reports applicable to the table which I am about to offer in evidence as is found on page 28 of the reports for the year ending June 30, 1907, and page 55G for the reports of

all the companies for the year ending December 31, 1907, except the Westchester Lighting Company, and as to that I offer so much of the entire report as is applicable to the table; for 1908. I offer the page 49 of all these reports, except the Westchester Lighting Company, and of that I offer page 2.

The Master: Tell me, what has the Westchester Lighting Company got to do with this?

Q. You found from this report the Westchester Lighting Company sells gas to the Consolidated?

A. In the Bronx. They have a business in the 31124
Bronx.

Mr. Ransom: Found that they sold gas to the Consolidated?

Mr. Chambers: Yes.

Mr. Ransom: Why, the statement is preposterous.

Q. They have a business in the Bronx?

A. Yes, sir.

The Master: They do not get on this transfer system, do they?

Mr. Chambers: Yes, they do.

Mr. Ransom: It is what is called the Annexed Territory. The situation, as I understand it, and 31125
the testimony in the case bears it out, is this: There is a territory in the Bronx which I believe is what is called the Annexed Territory, which is Westchester Lighting territory. That territory is supplied with gas from the Northern Union Gas Company.

Mr. Chambers: And the Northern Union is in here; the Northern Union gets its gas from the Consolidated.

Mr. Ransom: It has nothing to do with this case. There is no exchange of gas with Westchester, as the testimony in the case shows.

31126

Mr. Chambers: But there is an exchange of gas with the Northern Union, and the Northern Union sells the Westchester Lighting.

The Master: I think I will take a chance on this, to see what happens. There are some references here that probably indicate they do not mean anything. I will take this.

Mr. Chambers: I offer for 1909 page 55, except as to the Westchester Lighting Company, and I offer so much of the whole report of that company as is applicable to the table. For 1910 I offer page 55 of all the reports, except the West-

31127 chester Lighting Company's, and as to that I offer the first page. From 1911 to 1918, I offer page 65 of all the reports; that is, so much of it as is applicable to this table, except the Westchester Lighting Company's, and as to that company I offer so much of the first page as is applicable to the table.

The Master: Let me see the first page of 1918, of the Westchester Lighting Company.

Mr. Ransom: The Westchester ought not to be put in.

The Master: I do not think it does any harm

Mr. Ransom: Why should you not put in the

31128 Peekskill Company?

The Master: No, this is in a different situation. I will see what it is.

Mr. Ransom: It is a matter of juggling of figures to show a fictitious situation for the purpose of tearing this structure down.

Mr. Chambers: You have not seen the table yet, have you, Mr. Ransom? Perhaps you better withhold that until you see it.

Mr. Ransom: I know any table in which you put the Westchester Lighting is fictitious the same as the New York & Queens.

31129

Mr. Chambers: That is like the statement the other day, that the tax commissioners came here not under subpoena and came here to sit around. You should weigh your statements.

Mr. Ransom: I do. We are not interested here in these details about combination figures, made up in some hit-and-miss fashion. For example, the Westchester company is a company that charges, with the authority of the State of New York, a dollar or more for gas. Such a compilation has not any bearing on this case. We are not trying this case for the other companies; we ought to, but we are not.

31130

The Master: I will take it. The reports I will receive.

Mr. Ransom: I object to the report, or the typewritten document purporting to be of the Westchester Lighting Company, on the ground that it is incompetent, immaterial, irrelevant; that no contents of that report have any bearing upon any issue in this case; the Westchester Lighting Company is not a part of the transfer system; the situation is in no way as to this company within the issues of this case.

The Master: Overruled.

Mr. Ransom: Exception. I make the further objection that the report of the Westchester Company, made under the anomalous circumstances existing as to the Westchester Lighting Company, for the information of the Commission for the First District, is not binding upon the complainant company and is not admissible at the instance of these defendants against the complainant.

31131

The Master: Overruled.

Mr. Ransom: Exception.

Mr. Chambers: In view of that last statement —I have all these reports here in court, every one of them, the originals.

The Master: They are all in evidence.

Mr. Chambers: I am ready to have them marked. The Court holds that is not necessary. And as to the Westchester I am ready to prove these are the original reports sworn to by the company.

The Master: That is conceded.

Mr. Chambers: The objection does not go to

31133 that?

The Master: There is no question about their being the original reports. Judge Ransom's point is they have not anything to do with this case.

Q. Then from these reports, or so much of these pages which is now in evidence, Mr. Pyle, you prepared Table 156?

A. I did.

Q. Tell the Master, will you, please, what that table shows generally?

A. Gas production and sales, 1906 to 1918, inclusive, of the Consolidated system.

Q. By that you mean these companies you have

31134 named?

A. Yes, sir, excluding the New York & Queens Company and including the Westchester Lighting Company; operations in the First District only.

Q. What did you do with regard to the purchases and sales, where they were duplicated?

A. They are eliminated.

Q. Did you find duplication of sales and purchases?

Mr. Ransom: I object to the question. How can this B. S. determine whether they were duplicate purchases and sales, as he calls them, and eliminate them?

Mr. Ransom: I think if he has qualified to do that I would like to cross-examine him. When your Honor sees some of the rude mathematical errors that were made in those exhibits that were offered last night you will be in doubt; and the trouble with the thing is this: A young man comes on and sets up some house of cards, and then they will put someone else on to say that they have too much or too little, or something or other.

The Master: Objection overruled.

Mr. Ransom: Exception.

31136

A. What was the question, Mr. Chambers?

Q. The question was, did you find duplicate purchases and duplicate sales?

A. Why, yes, in some instances.

Q. And you eliminated those?

A. I eliminated those.

The Master: You were able to identify them as duplicates?

The Witness: Yes, sir, I was.

Q. What do you mean, Mr. Pyle, by duplicate purchases and sales?

Mr. Ransom: Objected to. The witness has shown no qualifications.

31137

The Master: Overruled.

Mr. Ransom: Exception.

A. The Consolidated Gas Company, for instance, might sell gas to the Northern Union Company and in turn the Northern Union Company might sell it to consumers. Well, the sales of the Northern Union Company would cover the same identical gas, presumably, or the same amount of gas, that the sales of the Consolidated covered. That would be a duplication.

Q. And that you have eliminated?

A. And that I have eliminated and included in only once, it being the same volume of gas.

Q. You have left it in once always?

A. In once always, of course. Eliminated the duplications of it. .

Q. And this was compiled from those reports and only from those reports?

A. Only from those reports.

Q. You used nothing else?

A. Nothing else.

Q. And is it a correct compilation?

A. It is a correct compilation from those reports.

Mr. Chambers: I now offer in evidence table
31139 156, being entitled "Gas Production and Sales, 1906 to 1918, Consolidated System, Duplicate Purchases and Sales Eliminated."

Mr. Ransom: Have you got more than one copy of this?

Mr. Chambers: Yes.

Mr. Ransom: The situation still is that they do not supply us with more than one copy, although we supplied two invariably.

Mr. Chambers: That is not so.

Mr. Ransom: In all our exhibits we supplied four copies to these defendants.

Mr. Chambers: Just a minute. Will you
31140 weigh what you say here?

Mr. Ransom: Yes.

Mr. Chambers: You did not furnish us with a lot of copies

The Master: Do not get into these discussions.

Mr. Ransom: Two copies to the Attorney General, four to the defendants.

Mr. Chambers: Not as to all things.

The Master: Is there any objection to this?

Mr. Ransom: There surely is. I object to it on the ground it is incompetent, irrelevant, im-

31141

material; on the ground that the qualifications of the witness to do any such thing as he has described have not been shown; that if your Honor has any idea that he is qualified to do any such thing, I ask leave to cross-examine as to qualifications before this paper is received.

Coming to the paper itself, I object on the ground that it does not have a bearing and is not competent upon the issues in this case. It is not a tabulation regarding any operations of the Consolidated Gas Company. We are not trying here, in spite of all the efforts of the defendants to the contrary, the cases of six or eight 31142
companies or the case of a system; we are trying here the case of the Consolidated Gas Company, and a table which is made up, which shows nothing at all as to the Consolidated Gas Company but which shows a lot of combined figures, or purported combined figures for what the witness calls a system, is incompetent, irrelevant, in no way probative upon the issues of this case, and so far as this complainant is concerned neither the report of the Westchester Lighting Company nor the figures therein contained, when tabulated by this witness, are of any pertinency here or competent against this complainant.

31143

From such casual inspection as we have been able to make of this proposed exhibit just out of the bag of this young man's employer—

Mr Chambers: How do you know it is out of his bag?

The Master: This "young man" talk is perfectly hopeless and useless. Just say "this witness."

Mr. Ransom: We find they have set up here a fictitious basis by including, as though in the transfer system, the Westchester operations with-

31144

in the City of New York, which are not included in the Consolidated computations; so that it would be misleading and is not of any pertinency on the issues of the case.

The Master: Objection overruled.

Mr. Ransom: Exception.

Paper marked Defendants' Exhibit AA-125.

Mr. Chambers: I would like to say for the information of the Court that Mr. Pyle has worked on some other tables, but they involve this New York & Queens, and we will be obliged to eliminate that company, and that is all.

31145

The Master: Well, put in all that you have got.

Mr. Chambers: That is all I have got ready, of these tables.

The Master: Then you suspend his direct-examination, do you?

Mr. Chambers: Yes. I would like to have him cross-examined on this table.

The Master: I won't do that. It is not worth while.

Mr. Ransom: This document involves a lot of reports, and I have not yet had an opportunity to examine them.

31146

Mr. Chambers: I will go on with the same witness with some other stuff.

The Master: Judge Ransom you want to have in mind in asking for time to examine papers, that so far as possible I am going to give you the afternoon and evening. I do not want to adjourn over days for it, I will not let you do that, this case has gone on from April and May.

Mr. Ransom: I do not ask for time, I do not ask for afternoons and I do not ask for evenings. What I do ask, and I understand Mr. Maltbie is

going to do it hereafter, is that I be given an additional copy of these blueprint exhibits. For example, if now I could send one of these copies out and have someone start checking it up with our copies of these reports, I could save considerable time.

The Master: You must have that in mind.

Mr. Chambers: You just keep in mind that you did not give us copies of all your exhibits, the oil contracts, for instance.

The Master: Do not answer that.

Q. Mr. Pyle, did you have in your possession Exhibit 178? 31148

A. Yes, sir.

Q. Or a copy of it?

A. I have a copy of it here.

Q. Complainant's Exhibit 178?

A. Yes, sir.

Q. And did you have access to the tax maps of the City?

A. I did.

Q. So far as they relate to this Exhibit 178?

A. Yes, sir.

Q. Take Block 239, Lots 1 and 5?

A. Yes, sir. 31149

Q. Did you prepare a map or a diagram of those two lots?

A. Yes, sir, I did.

Q. And where did you get—did you prepare them covering the years of 1906 to the present time?

The Master: What block is that?

Mr. Chambers: Block 239, the first one, Hester Street property.

Q. Now, you covered 1906 to the present time, did you not?

A. Yes, sir.

Q. Did you find the dimensions the same all the way through?

Mr. Ransom: I object to it as incompetent. We have had these tax maps all here, the tax maps were in evidence.

The Master: Objection overruled.

Mr. Ransom: Exception.

Q. First, I will ask you, where did you get your dimensions from?

A. Well, the dimensions from two general sources.

Q. Yes.

31151 A. Exhibit 178, to start, and the tax maps themselves in a case where the lots are split up differently from Exhibit 178.

Q. Now, take these two lots, were your dimensions the same as shown on Exhibit 178 for those?

A. I will have to look at Exhibit 178.

Q. Yes, looking at Exhibit 178?

A. Yes, sir, they are the same.

Q. That is the same, there was no change?

A. Except that I have divided 150 feet into two parts, 100 feet and 50 feet on one side, but substantially they are the same.

Q. And does that correctly show those two lots in

31152 that block?

A. Yes, sir.

Q. Take Block 689, Lot 17?

A. Yes, sir.

Q. Where did you get your dimensions for that lot?

A. I got those from the tax maps.

Q. And are the dimensions correct as shown on the tax map?

A. They are.

The Master: 689 on Exhibit 178.

Q. Lot 17?

The Master: That is not on Exhibit 178. In other words this witness has prepared some maps of property not in 178.

Mr. Chambers: Some of them are and some of them are not.

The Master: Some are not. This one is not.

Q. That lot is not on Exhibit 178?

A. No, sir.

Q. So you took the dimensions directly from the tax maps?

A. Yes, sir.

Q. And the dimensions are correct as shown on the 31154
tax map?

Mr. Ransom: Objected to. How can he testify it is correct, whether the tax map is correct.

Mr. Chambers: I said, are those dimensions correct as shown on the tax map?

The Master: What Mr. Chambers wants to say, is it a correct copy of the tax map?

Mr. Chambers: That is it.

Mr. Ransom: You cannot attack this company's real property titles in that way.

Q. Is it correct according to the tax map?

The Master: Is it a correct copy of the tax 31155
map?

The Witness: It is.

Q. Block 690, Lot 12, you did not obtain that from 178?

A. I obtained that from the tax maps.

Q. Is that a correct copy of the tax map?

A. It is.

Q. Block 691, Lot 11, is that a correct copy of the tax map?

A. It is.

The Master: As of what time is this, Mr. Chambers?

Q. What dates now, for all you have given?

A. Well, between 1906 and 1918.

Q. All of them?

A. The maps are in most cases the same maps with their amendments recorded directly on them.

The Master: Do you show the amendments on these?

The Witness: I show the amendments to show certain dimensions of the lots as given.

The Master: Well, do you show the changes from time to time in the tax map figures?

31157 The Witness: No, I just took a specific lot number as numbered and found out the dimensions from the tax map.

The Master: As of what date?

The Witness: As of the date between 1906 and 1918, as of whatever date they specify.

The Master: Is there anything on these maps to indicate the date you looked at them, as to what happened there?

Q. Those are the dimensions as of the present time?

A. They are the dimensions as of the present time, but it also may be dimensions clear back.

31158 The Master: What I mean, are they the dimensions as of the present time.

The Witness: As of the present time, yes, sir.

The Master: Of all these lots?

The Witness: All of these lots, with the exceptions of certain dimensions that I have been directed to place on them where the lots were divided, according to Mr. Maltbie's specific instructions.

The Master: Go ahead and we will see what this is.

Mr. Ransom: I object to this witness being interrogated so as to place in the record a lot of matter about a document that we have not before us so that we can frame objections.

The Master: He is just explaining the document first.

Q. Block 691, Lot 11, you obtained from the tax map?

A. Yes, sir.

The Master: Well, let us cut that short. There are a number of these sheets where the property is shown that comes from the tax map alone, and others where it comes from Exhibit 178? 31160

The Witness: Yes, sir.

Mr. Chambers: I think I ought to run through these.

Mr. Ransom: It may give the dimensions of a lot of property the company has not owned for a number of years.

The Master: What is the difference? I will let them build up their case on their theory.

Mr. Ransom: Well, we have got to meet it, and if they put in things of that sort—

The Master (interrupting): Why do you have to meet it? 31161

Mr. Ransom: Because they will base an argument on it.

The Master: If you are clear that their argument is unfounded, why do you have to meet it?

Mr. Ransom: If they put in the record things which are not correct, we cannot let the record stand uncontradicted.

The Master: I will take it.

Mr. Chambers: We are not going to put anything in that is not correct.

The Master: Go ahead.

Q. The next one, Block 989, Parcel No. 1, that is from Exhibit 178?

A. Yes; with instructions by Mr. Maltbie.

The Master: To what?

The Witness: To draw certain lines.

Q. These two different parcels, that relates to parcels 1 and 2?

A. Yes, sir.

The Master: But you have not changed the lot number any?

The Witness: No, sir.

31163 Q. Block 952, Lot 7, was obtained from Exhibit 178 and the tax map?

A. Yes, sir.

Q. Block 959, Lot 1, from Exhibit 178?

A. Directly from Exhibit 178.

Q. Block 979, Lot 6, from Exhibit 178 and the tax map?

A. That is Lot 1, I believe, 979, Lot 1?

Q. Yes.

A. That is from Exhibit 178 and the tax maps.

Q. Block 978, Lot 6?

A. Same thing; same sources.

Q. Block 951, Lot 35.

A. From Exhibit 178.

31164 Q. Block 987, Lot 37?

A. From Exhibit 178 and the tax maps.

Q. Block 1092, parcel A?

A. From Exhibit 178.

Q. 1093, parcel A?

The Master: Wait a minute, Block 1092, parcel A, what lot number is that?

Q. Part of Lot No. 7. That was obtained from Exhibit 178?

A. Yes.

Q. That is part of Lot 7?

A. Yes.

Q. Block 1093 was obtained from Exhibit 178?

A. Yes, sir.

Q. That is part of Lot 9?

A. Yes, sir.

Q. Block 1092 and 1093 found on sheet 9A. How did you work those out?

A. By taking the previous drawings 89 as the basis. Dr. Maltbie directed that I extend the lines as shown on line A with the dimensions as shown.

Q. Block 1457, Lot 6?

A. That came from Exhibit 178 with instructions by Dr. Maltbie as to shading and division of par- 31166
cels.

Q. Lot 1, Block 1157.

A. That was obtained from Exhibit 178 with directions by Dr. Maltbie as to division of the lot into two parts and the shading.

Q. The 300 feet and the 500 feet?

A. The 300 feet and the 500 feet.

Q. Block 1177, Lot 21?

A. That was from Exhibit 178.

Q. Block 1670, Lot 1?

A. That is from Exhibit 178.

Q. Block 1692, Lot 1?

A. From Exhibit 178. 31167

Q. Block 1682, Lots 8 and 9.

The Master: 8 and 11.

Q. 8 and 11.

A. From Exhibit 178.

Q. Now, how about parcels 1 and 2 of Lot 5, Block 1704?

A. The general plan was taken from Exhibit 178 and the divisions were made according to instructions by Dr. Maltbie into parcels 1 and 2, and the shading was added according to his directions.

Q. Block 1642, Lot 32.

A. From Exhibit 178.

Q. Lot 33, same sheet?

A. That is from Exhibit 178.

Q. Block 1998, Lots 50, 53, 54, 55 and 56?

A. From Exhibit 178.

Q. Block 1999, Lot 1?

A. From Exhibit 178.

Q. Block 2108, Lot 23?

A. That is from Exhibit 178.

Q. Block 3236, Lot 1?

31169 A. That is from Exhibit 178, and the lines drawn, the extra shading, the division of the lot, as per the directions of Dr. Maltbie.

Q. Lot 5, Block 1070?

A. That is from the tax map.

Q. Block 716, Lot 14?

A. That was taken from the tax map.

Q. Block 715, Lot 59?

A. From the tax map, also Lot 51 from the tax maps.

Q. Block 870?

A. That was from Exhibit 178.

Q. Lots 47 and 60, from what?

31170 A. From Exhibits 178, the whole block.

Q. And the lot measurements, where did you get those?

A. The lot measurements from the tax maps very probably. Yes, the lot measurements were from the tax maps.

Q. Did you prepare an index and a notation sheet as to—first we will take the notation sheet?

A. I prepared a notation sheet. I am not certain whether I prepared the index or not.

Q. What does the notation sheet show?

A. Well, it shows two styles of shading and one style indicates a title of real estate claims to be disallowed.

The Master: Disallowed by whom?

The Witness: This title I placed on here at the direction of Dr. Maltbie.

The Master: You don't know who disallowed it, do you?

The Witness: No.

The Master: Whom do you say disallowed it, Mr. Chambers?

Mr. Chambers: I will connect that up later. 31172

The Master: No. Whom do you say disallowed it?

Mr. Chambers: Why, the defendants in this case.

Mr. Ransom: All of them?

The Master: In other words, you contest it?

Mr. Chambers: Yes.

The Master: Well, then the witness is really saying what is contested by the defendants?

Mr. Chambers: Yes, I consent that it means that.

Q. Now, the other cross-section?

A. The other cross-section is entitled "Indicate Real Estate Not Claimed by Consolidated Gas Company in rate base." 31173

Q. These maps are correct, are they?

A. They are.

Q. As indicated from the sources from which you obtained them?

A. Yes.

Q. And you did the work yourself of running them?

A. Yes, sir.

31174

Mr. Chambers: I offer all these maps in evidence which have just been identified by Mr. Pyle, to be connected up by additional proof.

Mr. Ransom: That includes the—

Mr. Chambers: Together with the index.

Mr. Ransom: And this (indicating).

Mr. Chambers: Yes, the notation sheet.

Mr. Ransom: I object to this as immaterial, incompetent and irrelevant. I particularly object to the offer of this so-called notation sheet.

The Master: As corrected?

Mr. Ransom: Well, it is not corrected.

31175 The Master: It is corrected on the record.

Mr. Chambers: I consent that what the Master branded it is really the genuine title.

The Master: Give me the exhibit, and I will correct it.

Mr. Ransom: Let them do it, for one thing.

The Master: That is not important.

Mr. Ransom: In the second place, I object to the receipt of this with some of those lines shaded in the manner in which the witness has testified. There has been no foundation laid for it, it is done by somebody else. This idea of putting forward these witnesses who make
31176 up these things in a certain way under someone else's direction, without that some other person taking the stand—it appears affirmatively from the testimony of this witness that even the man who gave him the directions as to the shading could not by any possibility have been qualified to pass on this question here.

The Master: The objection is overruled. I am going to receive this as a sort of an explanation of what the defendants claim about something or other, that is all.

Mr. Ransom: Well then, I want to make a further objection that it appears from what Mr.

31177

Pyle has said that the dimensions he has given for parcels not included in Exhibit 178 are not the dimensions during the times that this property was owned and used by the Consolidated Gas Company, but such dimensions as he finds upon the tax maps as of the present time.

The Master: I understand the situation, and I am going to take it for what it is worth. I do not think it is worth much.

Mr. Ransom: I think it is worth less than that.

Mr. Chambers: Did you hear all the Deputy Tax Commissioners testify to the sizes of all 31178
these lots during these years?

Mr. Ransom: Yes.

Mr. Chambers: Did you hear me say that I was checking them up with them?

Mr. Ransom: Yes.

Mr. Chambers: There is proof now that they were correct as to all these years.

The Master: Objection overruled. The exhibit will be marked.

Marked Defendants' Exhibit AA-126.

Mr. Ransom: It is understood that the second notation, so-called, I suppose, speaks as of the present time, to indicate real estate not claimed 31179
by the Consolidated Gas Company in rate basis, whatever that may be.

The Master: Don't care about that.

Mr. Ransom: I do care about it.

The Master: No, you don't. Here are some pictures which Dr. Malthie has prepared to which they are going to refer in their proofs. It is only valuable as the proof makes it so.

Mr. Ransom: They will be claiming by tomorrow afternoon that it is proof.

Mr. Chambers: No, we don't make any extravagant claims such as are made by the counsel for the complainant.

(Witness excused.)

Mr. Chambers: For the purpose of the record, we have had a number of other witnesses ready to follow up this line of proof, but that testimony will depend upon some of these tables which have been corrected, and on which the men are now working. They are working to finish up the tables, eliminating New York &
31181 Queens. Mr. Clark may be able to go on with Mr. Frank.

Mr. Ransom: Mr. Carter and Mr. O'Brien are both here. They called for us to produce Mr. Carter, and he is here.

CHARLES FRANK, called as a witness in behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CLARK:

Q. Where do you live, Mr. Frank?

31182 A. 692 Madison Street, Brooklyn.

Q. What is your profession?

A. Accountant and statistician.

Q. When did you pass your examination as an accountant?

Mr. Ransom: Which examination do you mean?

Q. As a certified public accountant?

A. I am not a certified accountant.

Q. You are not a certified public accountant?

A. No, sir.

Q. Where did you work after leaving the university?

A. Yes, sir.

Q. What year?

A. 1908.

Q. Where did you work after leaving the University?

A. At the time I went to the university I was working for the Lehigh Valley Coal Company. I worked there for about a year after I graduated from the university.

Q. What did you do with the Lehigh Valley Coal 31184
Company?

A. Part of the time I audited and made up some of the mining costs, mining royalties, and later on I was assistant to the general auditor of the company.

Q. After that you went to the Public Service Commission?

A. Yes, sir.

Q. How long were you there?

A. About three years.

Q. What work did you do at that time?

A. In Dr. Webber's department I examined the annual reports of the gas companies, street railways, electric companies; and at that time considerable of 31185
the correction work was done in the company's offices, and I did quite a lot of that.

Q. You worked in the company's offices?

A. Yes, I spent considerable time in the Metropolitan offices, and the Third Avenue offices, correcting their reports and getting information in connection with them.

Q. In 1914, did you go with the Brooklyn Rapid Transit Company?

A. Yes, I worked for the Brooklyn Rapid Transit Company for about one year in 1914.

Q. What did you do there?

A. Audited the disbursements principally, and classified them.

Q. And in 1915 you went with the Robert H. Ingersoll & Bros. Company.

A. Yes, Robert H. Ingersoll & Bro., watch manufacturers.

Q. What did you do there?

A. I had charge of the general books and the cost work.

Q. From 1916 to date you have been with the
31187 Public Service Commission?

A. Yes, sir.

Q. Are you now with the Public Service Commission?

A. Yes, sir.

Q. What is your position there?

A. My title at the present time is statistician.

Q. Did you pass a civil service examination?

A. Yes, sir.

Q. Were you assigned by Dr. Webber to work on the books of the Consolidated Gas Company in connection with this litigation?

A. I was.

31188 Q. When did you commence that work?

A. I first went to the company's offices about June 10th, but remained there only a few days. I have been there continually, I think, since July 1st.

Q. You have had assistants there under you?

A. Yes, sir.

Q. How many men?

A. From three to five.

Q. I show you a table entitled, "Consolidated Gas Company, General Profit and Loss Account for the years 1906 to 1918, inclusive," and ask you whether that was prepared under your direction?

A. Yes.

Q. Will you state whence these figures are derived that appear on this tabulation?

A. All of the figures with the exception of those marked "Adjustments, Credits and Debits," are taken from the General Ledger or General Ledgers of the company.

Q. Where did you get the figures as to adjustmen..?

A. From the operating ledgers.

Q. The adjustments are not divided into debits and credits on the general ledger.

A. The adjustments are shown on the general ledger, but generally in a month the net debit or the net credit is shown, and the nature is fully described in the general journal, so I took these figures from the operating ledger and the operating journal. 31190

Q. Have you checked these and are the figures stated correct transcripts of the figures on the books which you have described?

A. Yes.

Mr. Clark: I offer this tabulation in evidence.

Mr. Ransom: May I see it?

The Master: Show it to him. Is this the original that Mr. Frank has?

Mr. Clark: That is the original, yes. 31191

Mr. Ransom: I object to this on the ground that it is incompetent, immaterial and irrelevant. It appears from the face of the document—I take it it is unnecessary to bring it out by cross-examination of the witness—that this includes a great many matters which are wholly immaterial and wholly irrelevant so far as any issues in this case are concerned, matters which have been previously offered in other forms, equally incompetent and equally immaterial and irrelevant, which have nothing to do whatever with any issue conceivable in this case.

31192

The Master: What is it especially?

Mr. Ransom: Well, for instance, the matter of bond income from the Brush Electric Illuminating Company; matter of bond income from the New York & Westchester Company, the matter of dividends from the Municipal Lighting Company, and the New York & Queens Electric Light & Power Company; the New York Edison Company dividends; the matter of interest on East River Gas Company advances; interest on Astoria.

The Master: I get your point, Mr. Frank,
31193 this includes revenue from sources other than the gas business, does it?

The Witness: It does.

The Master: Objection sustained.

Mr. Clark: Exception. I ask that it be marked for identification.

The Master: Yes.

Mr. Chambers: Will the Master please state the grounds of your ruling?

The Master: That it includes revenue from sources other than the gas business.

Mr. Chambers: That applies to Mr. Teele's statement, too, non-operating revenues.

31194 The Master: But he excluded it from his statement.

Mr. Ransom: We didn't show non-operating revenue.

Mr. Chambers: You don't know but what we are going to. This is only a preliminary table.

The Master: I won't take it.

Mr. Clark: In order to base our future tables.

The Master: I won't take it.

Mr. Chambers: You realize that Mr. Teele did the same thing.

The Master: No, he did not.

Mr. Chambers: Yes, he did it all along and then eliminated it.

Mr. Ransom: Then there is no need of putting it in again, if he has put it in.

Mr. Chambers: His is not correct, and we have to meet that.

The Master: I am perfectly clear in my ruling. I am not going to get into this case, or confuse this case by receipts from other sources. I am going to find out what it costs to make and distribute gas, and what the invested capital is. If they make twenty million dollars on 31196
the Brush Electric Company and the Edison Company, I don't care about it. That is for the legislature to deal with.

Mr. Chambers: We have to put in all sources to show how we finally get down to the real question.

The Master: My ruling is made.

Mr. Chambers: I don't think it is quite fair to us in view of the tables you have allowed in by the other side.

The Master: I am sorry you think that way.

Mr. Chambers: It is only a preliminary table. Later on you will complain, or somebody will, 31197
because we have not shown the whole matter.

Mr. O'Brien: My exception is noted?

The Master: Yes, exception noted to all defendants.

Paper marked Defendants' Exhibit AA-127 for identification.

By Mr. Clark:

Q. I show you a table entitled "Consolidated Gas Company of New York, Details of Items of Miscellaneous Income in Profit and Loss Account," and ask you whether that was prepared under your direction?

A. It was.

Q. Can you state from what sources those figures came?

A. From the general ledger.

Q. Was this table prepared under your direction?

A. Yes.

Q. Did you check it and can you state that it is accurate

A. I can.

Mr. Clark: I offer this table in evidence.

The Master: Does that include any of this revenue from other sources, Mr. Frank?

31199 The Witness: I believe not.

Mr. Ransom: I call your attention to such items as, interest on City of New York corporate stock; interest on United States Government Liberty Bonds; Fire Insurance Participation Income; miscellaneous operating revenue, United States Government; miscellaneous revenue, real estate rent receipts, irrespective of whether they are for property included in the gas business or not, properties that are not within Exhibit 178; lamp maintenance income; wharfage; miscellaneous rent revenue; miscellaneous interest revenue. Obviously many of these things have no relation

31200 to the gas operation and gas business of this company.

The Master: Why did you include interest on United States Government Liberty Bonds, Mr. Frank?

The Witness: That is the detail of an account called miscellaneous income which the company has on its general ledger, which is shown on the other statement. It is simply the supporting detail of miscellaneous income, so-called by the company.

31201

Mr. Ransom: It is a profit and loss account, your Honor, of the entire affairs of the company.

The Master: Miscellaneous income included in the profit and loss account?

The Witness: Yes.

The Master: I am not interested in the profit and loss account especially.

Mr. Ransom: Not the slightest.

Mr. Clark: This is just a foundation for our case. We have to take these things as they appear in the books, and then cut out the things that are not applicable. It would not be our 31202
claim that interest on United States Government bonds is applicable to the gas business.

The Master: I will sustain the objection for the time being. Mark it for identification.

Mr. Chambers: As to that other exhibit, I think your Honor ought to reconsider it later.

The Master: Maybe I will.

Mr. Chambers: In the Albany case we had it all in tables like this.

Mr. Clark: It is a question of building up our case.

Mr. Chambers: I do not claim you are bound by what was done in that case, but the Judge 31203
took time to consider, when we first started to offer tables, and he came out on the bench and said that as a matter of bookkeeping it could not be done any other way, that we would have to state these things as we found them in the books, and then finally show what would be considered of what we found.

The Master: Just now I will sustain this objection and let this be marked for identification. I may change my mind.

31204 Charles Frank, Direct.

Mr. Chambers: First off it would seem that we would not have any business dealing with these other matters, but we are trying to show you the whole layout, and then strip it.

Mr. Ransom: Strip is the word.

Paper marked Defendants' Exhibit AA-128, for identification.

Mr. O'Brien: Your Honor appreciates the position we have taken that if money is being made from excess profits of other years they should be traced by the complainant, and such
31205 moneys as were derived from the gas making business which are now producing revenue are in this case.

The Master: I am ruling against you on that.

Mr. Chambers: These are not offered for the purpose of having you consider other income from other sources, it is only set up as a matter of bookkeeping.

The Master: What else have you got, Mr. Clark?

Q. Mr. Frank, I show you a paper entitled, "Consolidated Gas Company of New York, Details of Accounts included in Operating Expenses, 1906 to
31206 1918, inclusive," and ask you whether that was prepared under your direction?

A. It was.

Q. Can you state whence the figures stated in that schedule are derived?

A. They come from the general ledger.

Q. Have you checked this and can you state that the figures are accurate transcriptions from the books?

A. Yes, sir.

Mr. Clark: I offer that in evidence.

The Master: Have you seen that, Mr. Ransom?

Mr. Ransom: No, naturally not.

By Mr. Ransom:

Q. Are these the ledger figures, Mr. Frank?

A. These are the general ledger figures.

Q. No changes?

A. No.

Q. Is this all of the accounts included in operating expenses in the company's books?

A. These are all the accounts included in operating expenses on the general ledger.

Q. Is taxes in here?

A. If it was included in operating expenses it is there.

31208

Q. Well, is taxes in here?

A. I don't believe they are; they are not called operating expenses, apparently, by the company.

The Master: In this general ledger?

The Witness: In that general ledger.

The Master: This is a tabulation of something in the general ledger?

The Witness: Yes.

The Master: I am going to take it.

Mr. Ransom: Well, it is not made up from any book in evidence.

The Master: I don't care whether it is or not, it is made up from a book that he found in the company's offices.

31209

Mr. Ransom: Your Honor ruled that the general ledger was not admissible.

The Master: I am going to take this.

Q. Taxes are not in here?

A. No, sir.

Q. Renewals and replacements are not in here?

A. No, sir.

The Master: Can't you see that?

Mr. Ransom: I am trying to find what he has done.

The Master: He has on there what he says he found in the general ledger. I am going to take it.

Mr. Chambers: That is what the Master directed us to do, go after their books.

Mr. Ransom: I object to it on the ground that it is not a tabulation of any book in evidence.

The Master: I don't care. He went up to your office and he found a book called a general ledger, and he took some figures off of it, and
31211 he says these are the figures that came from that book. I will take it.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit AA-129.

The Master: If these tables are not complete they are of no use to me.

Mr. Ransom: What is the use of taking tables that are incomplete I just call your attention to the fact that this statement is inaccurate in the caption, "Details of Accounts Included in Operating Expenses, Taken from the Company's Ledgers."

31212 The Master: The witness's statement is that it is from the company's general ledger. Go ahead, Mr. Clark.

By Mr. Clark:

Q. Mr. Frank, I show you a schedule entitled, "Consolidated Gas Company of New York, Cost of Repairs 1906 to 1918, inclusive," and ask you whether that was prepared under your direction?

A. Yes, sir, that was prepared under my direction?

The Master: You say that is compiled from the operating ledgers?

The Witness: Yes, sir.

The Master: As distinguished from the general ledger?

The Witness: Yes, sir.

Q. This is compiled from the operating ledgers?

A. Yes, sir.

Q. Did you yourself make the notations that appear on the bottom of the first page?

A. I verified those notations.

Q. The information contained in those notations is derived from the books themselves?

A. From the company's operating ledgers. 31214

The Master: This is offered?

Q. Have you checked the figures in that and can you state they are accurate?

A. They are accurately transcribed from the books.

Mr. Clark: I offer this in evidence.

Mr. Ransom: I object to this on the ground it is incompetent, the witness's qualifications not appearing to do any such thing as he has undertaken to do by way of altering the company's accounts as kept under the uniform system of accounts. For example, he puts on here notations, where he finds items shown in the company's accounts as kept under the uniform system of accounts, like "Includes extraordinary repairs as follows"—and then various items. 31215

The Master: Well, that is his statement of them.

Mr. Ransom: "Includes extraordinary repairs" and "includes extraordinary repairs."

The Master: I will admit it.

Mr. Ransom: He is not qualified to pass on that.

Mr. Clark: He is qualified to claim it.

The Master: He is qualified to claim it on behalf of the defendants.

Mr. Ransom: He has undertaken to segregate various accounts as "repair accounts not specifically provided for in the accounting order"—whatever that may be.

The Master: Objection overruled.

Mr. Ransom: Exception.

Marked Defendants' Exhibit AA-130.

The Master: I do not care how accounts are juggled.

Mr. Ransom: Providing it is explained to you.

31217 Q. Mr. Frank, I show you a copy of a table entitled "Consolidated Gas Company of New York, Cost of Production and Storage of Gas at Each Station, 1906 to 1918," and I ask you whether that was prepared under your direction?

A. It was.

Q. From where did you get the figures that appear in this schedule?

A. From the operating ledgers of the company.

Q. In all cases?

A. In all cases.

Q. The figure "Derived Cost per M Made" appears on the fifth line from the bottom. Does that

31218 appear on the operating ledger?

A. That does not.

Q. What is that?

A. That is derived from the total cost and the number of thousand cubic feet of gas made.

Q. That is a calculation from those two figures?

A. That is a calculation from those two figures.

Q. Did you make that calculation yourself?

A. No, it was made under my direction. I did not make the calculations.

Q. Did you check it?

A. I tested it here and there to verify it.

Q. The figures for a thousand cubic feet of gas made, from whence is that figure derived?

A. From the record of manufacture.

Q. What is the record of manufacture?

A. It is a book kept by the company which, among other things, shows the make at each station for each month, the accumulated figures for years.

Q. Figures of gas made were accumulated from the monthly figures?

A. Also in the record of manufacture.

By the Master:

Q. Does your figure agree with that? 31220

A. It is taken from that book.

Q. Does it agree with it?

A. It agrees with it.

By Mr. Clark:

Q. Can you state the figures on this tabulation are accurate?

A. I can.

Mr. Clark: I offer this tabulation in evidence.

Mr. Ransom: May I just look at it a moment?

The Master: Yes.

Mr. Ransom: I object to the admission of this offered exhibit on the ground that the witness, 31221 an employee of the Public Service Commission for the First District, one of the defendants in this case, that commission having prescribed account headings and groupings, is not at liberty now to substitute any other groupings and other bases of deduction than those imposed on this company by force of law.

The Master: I will overrule the objection.

Mr. Ransom: Exception.

Marked Defendants' Exhibit AA-131.

The Master: Have you a blueprint copy of that?

31222 Charles Frank, Direct.

Mr. Ransom: No, we have not copies of any, hardly.

Mr. Clark: They are on their way over.

The Master: They are on their way.

Q. In connection with this statement, Mr. Frank, the cost of production of gas of the 14th Street works, will you state what years for the cost of enriching gas are included in the statement here?

A. In 1906 and for one or two months of 1907 the books indicate that oil gas was made at the 21st Street station for account of the 14th Street station,
31223 and the cost of the labor and oil was charged into the 14th Street production account, and therefore contains the cost of that oil and the labor and other material in making that oil gas.

Q. But aside from that period there is no charge against the 14th Street coal gas for enrichment?

A. Beginning with 1908 and continuing and including 1918, there is no change in the production account at the 14th Street works for any gas oil for enriching oil?

Mr. Clark: I have no other questions and I have no other tables prepared.

The Master: You are through with Mr.
31224 Frank?

Mr. Clark: No, I am not, sir. I will have to recall him for some other work later.

The Master: On other tables?

Mr. Clark: Yes.

The Master: When will that be?

Mr. Clark: It is a question of the typing. Some of them are ready, but I did not want to put them in evidence—

The Master: How are we prepared on other witnesses or other evidence.

Mr. Chambers: I can go along pretty well as soon as Mr. Pyle and Mr. Goldthwaite finish up

31225

with their tables, which I think will be this afternoon. They will be finished up but not typed, and we will have to get the copies after they are fixed. They are working on them now. Then I can go along.

The Master: Suppose you give Judge Ransom the blueprint copies here of those exhibits that were received in evidence.

Mr. Clark: Yes, I will.

The Master: There is not any other witness that you can call this afternoon?

Mr. Ransom: Mr. Carter is here; they have called for him.

31226

The Master: Do you want Mr. Carter, Mr. O'Brien?

Mr. O'Brien: Well, not today, your Honor. I want to get the stock list down. That examination would not take up very long, though; perhaps it would be twenty minutes, on that branch. There is some other matter that I am going into and I will have to look into it a little bit further.

The Master: You mean that you are going to try to go into it, or that you will?

Mr. O'Brien: Well, you know hope springs eternal in the human breast, and it is approaching the month of February, which is my lucky month.

31227

The Master: I think the defendants have really done pretty well this week for two days and a half, and we have covered a whole lot of ground.

Mr. Chambers: We tried to live up to your expectations.

Mr. Ransom: They really started last night.

The Master: I think we are getting along pretty rapidly and pretty well.

31228

Mr. Ransom: If you were losing the money you would not think so.

The Master: You can use this afternoon, I think, advantageously in having Mr. Teele and these other men check up these tabulations.

Mr. Ransom: They can work while Mr. O'Brien and Mr. Chambers talk. We will not waste the time; let them put on somebody else.

The Master: But they have not anybody else.

Mr. Ransom: Let them put on Mr. Carter. How about the master mind that has been back of these Goldthwaite and Pyle exhibits? Those
31229 witnesses must be ready.

The Master: Get your copies of these exhibits we have had this morning.

Mr. Ransom: We have tried to.

Mr. Neumann: You have had all but the last one.

Mr. Clark: When Mr. Ransom offered exhibits I asked him for more than one copy I asked him for two; I do not know whether I should give him two copies of mine.

The Master: The defendants may have their experts analyze all these exhibits that have gone in, so that they will be prepared to cross-examine
31230 on them in the morning. You say Pyle and Goldthwaite will have the rest of their tabulations ready?

Mr. Chambers: They said they could finish this afternoon, and then there is the typing. It takes a specialist to type those tables. I think some time early tomorrow morning they will be ready.

The Master: They will be here anyhow, and they will be through with their work. They will be here, and Mr. Frank will be here.

31231

I will tell you what you do. You have them do all of this work of the preliminary on the New York & Queens and recast those tables, Mr. Frank doesn't have to do any of that, does he?

Mr. Clark: No.

The Master: Mr. Frank can come here in the morning, and you cross-examine Mr. Frank on these schedules that went in this morning and then we will have Mr. Goldthwaite, if he is ready with the rest of those schedules, we will take them in and then we will cross-examine him as far as possible.

31232

Mr. Ransom: They are not through with Mr. Frank. Why should we examine? It seems to me the first thing they will have to do is to finish up on any of these.

The Master: I want you to save time.

Mr. Ransom: Let them go ahead with either Mr. Goldthwaite or Mr. Pyle the first thing in the morning, and then we can cross-examine.

Mr. Chambers: Well, the Master has outlined that correctly. I think if Mr. Frank is called for cross-examination then by that time we will be ready.

31233

Mr. Neumann: If you are anxious to save time, the Master's suggestion is the best way to do it. If you want to waste time and cry around about the company losing money, go ahead.

Mr. Chambers: He has arranged the order of proof, and I think you ought to cross-examine.

Mr. Ransom: The only difficulty is that they have put in an enormous quantity of stuff running over thirteen or fourteen years.

The Master: Well, don't you want to cross-examine?

Mr. Ransom: I would rather go ahead with Goldthwaite in the morning.

31234

The Master: As soon as Goldthwaite is ready, we will go ahead with him. Mr. Goldthwaite or Mr. Pyle will be here in the morning.

Mr. Chambers: I am to produce one of them or the other?

The Master: I think Mr. Frank might just as well be around here. Mr. Ransom may change his mind.

Adjourned to Thursday, January 15, 1920, at 9:30 A. M.

31235 Last Complainant's Exhibit 456.
Last Defendants' Exhibit AA-131.

31236

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 31237

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, January 15, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 31238
MR. O'BRIEN, of Counsel for defendant Swann.

CLIFFORD H. PYLE recalled:

CROSS-EXAMINATION BY MR. RANSOM:

Mr. Ransom: On the matter of qualifications, I shall pass them at the present time and take up Table 156.

Mr. Chambers: Why don't you examine on his qualifications?

Mr. Ransom: I don't know what he is going to try to do yet. 31239

The Master: Go ahead and ask him.

By Mr. Ransom:

Q. Did you personally prepare each of these maps on Exhibit AA126, Mr. Pyle?

A. I did.

Q. You personally drew them?

A. Yes, sir.

Q. Did you draw these maps by tracing over the tax maps?

A. No, sir.

Q. Didn't you draw many of them by tracing over Exhibit 178?

A. No, sir, I didn't trace any of them.

Q. Which of these plans, if any, show different dimensions of blocks and lots from Exhibit 178?

A. I have a list that I submitted yesterday.

31241 Q. When you said that you took a dimension from Exhibit 178 and the tax maps, you meant you found the identical dimensions on Exhibit 178, and on the tax maps?

A. Yes.

Q. You have not made maps to show all of the property on Exhibit 178?

A. No, I made maps as directed by Dr. Maltbie.

Q. And you left out various parcels that are on Exhibit 178 that he told you to leave out?

A. Well, he told me what to put in.

31242 Q. You know that you have not got on this exhibit diagrams of all the property that is on Exhibit 178?

A. I didn't check up to see.

Q. And you have not put on your Exhibit AA126 all of the property which was shown by the tax maps put in evidence by Mr. Chambers when the Deputy Tax Commissioners were here?

A. I don't know about that at all.

Q. From what source did you get the dimensions as shown by you on this exhibit for Block 689, Lot 2?

A. I got those from the tax maps.

Q. Are you sure that the dimensions which you show there are the precise tax map dimensions?

A. I took them from the tax maps and believed them to be accurate.

Q. Was it taken from the Commissioner's damage map of the Chelsea Improvement rather than the tax maps?

A. No, sir, from the tax maps.

Q. From what source did you obtain the dimensions for the westerly portion of Blocks 1092 and 1093, your Map 9A?

A. Dr. Maltbie instructed me to draw the map as 31244
shown, with the dimensions there shown.

Q. Then you did not get the dimensions from any source except Dr. Maltbie?

A. For that particular map, no, as I testified yesterday.

Q. You did not take the tax map dimensions?

The Master: He has told us. He took the dimensions that Dr. Maltbie told him to put on there.

Q. Looking at your Sheet 19, is it not a fact that you traced that from Exhibit 178?

A. No, I did not.

Q. Or copied it from Exhibit 178? 31245

A. Yes, I copied it with the exception that I put a line down through the part there and shaded it.

Q. Who told you to put that line there?

A. Dr. Maltbie instructed me.

The Master: Don't waste time. He told us yesterday. There is no use having this man repeat what he told us yesterday.

Mr. Ransom: I wanted to get the source of that figure.

The Master: He gave it to us yesterday.

Mr. Ransom: Am I correct in the assumption that these maps are not received in any way as showing the propriety of any of these parcels?

The Master: No, the maps are here for some purpose. What reference they are going to make to them, or what argument they are going to base on them I don't know.

Q. Mr. Pyle, did you have anything to do with the preparing of Exhibit AA122, which shows gas production and sales of the Consolidated Gas Company alone?

31247 A. No, sir.

Q. Are you familiar with this Exhibit AA122 at all?

A. Well, I have seen it; I am not thoroughly familiar with it.

Q. Is this Exhibit AA125 made up in the same way, to show similar information, for the Consolidated system as a whole?

A. Yes, sir, in similar form.

Q. Have you your working papers here on this Exhibit AA125?

A. Yes, sir.

Q. What amount of gas made during the year
31248 1918 by the New York Mutual Gas Light Company did you include in the total of gas made by the Consolidated system in 1918? That is to say, of this total of 33,127,384 M. cubic feet, of that how much did you put in for the New York Mutual?

A. I haven't that working paper here.

Mr. Ransom: I don't know that I can do much with him if he hasn't got his working papers. He has given here all of the companies, just bunched them, without indicating what he has put in for different companies, and with very obvious errors.

The Witness: That was obtained by adding up the gas made by the individual companies. Some of that is given here.

Q. You can't tell as to the New York Mutual?

A. I haven't that here; I thought I had the whole bunch, but I haven't.

Mr. Ransom: I don't think we can go on until he gets his working papers.

(Witness excused.)

31250

GEORGE E. GOLDTHWAITE recalled:

DIRECT-EXAMINATION CONTINUED BY MR. CHAMBERS:

Q. Mr. Goldthwaite, take Table 150—have you now eliminated the New York & Queens Gas Company from the table?

A. I have.

Q. Name the companies that you have included in that table.

A. The companies included in Table 150 are: Consolidated Gas Company; Astoria Light, Heat & Power 31251
Company; New Amsterdam Gas Company; Central Union Gas Company; Standard Gas Light Company; New York Mutual Gas Light Company; Northern Union Gas Company.

Q. Now, that table shows what, Mr. Goldthwaite?

A. That table shows the manufacturing capacity of each plant of each company as reported to the Public Service Commission, as shown in the Annual Report to the Public Service Commission and its predecessor.

Mr. Chambers: I offer the table in evidence.

The Master: Is there any objection other than that stated when it was offered before? I ruled it out because the New York & Queens was included. Otherwise I was inclined to allow it as a tabulation.

Mr. Ransom: I object on the further ground—I don't know whether I indicated that as an objection before—that this is ambiguously labelled "Manufacturing Capacity," without any indication whether it means plant capacity or what,

31253 there being two different kinds of capacity which are blended under the ambiguous term of "Manufacturing Capacity."

The Master: Well, I would not concern myself about that.

Mr. Ransom: They are just building a house of cards.

The Master: I would not concern myself about the label just now. The statement shows something which the witness calls manufacturing capacity. We will see what it is.

This young man, who doesn't know just what the difference is between these two kinds of ca-

31254 pacity, puts this in and then will come along some doctor of philosophy or doctor of veterinary medicine, and say that the company has too much or too little.

Q. The table as now revised, with the elimination of the New York & Queens is correct, is it, Mr. Goldthwaite?

A. It is correct, yes, sir.

The Master: It will be received.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit AA132.

Q. Now, Mr. Goldthwaite, Table 151.

A. Table 151. Do you want me to describe it?

Q. Yes.

A. It shows the gas manufactured by each station of each company named in the preceding table, as shown in the annual reports to the Public Service Commission and predecessor.

Q. And you used the reports of what companies?

A. The reports for the Consolidated Gas Company; the Astoria Light, Heat & Power Company; New Amsterdam Gas Company; Central Union Gas Company; New York Mutual Gas Light Company; 31256
Northern Union Gas Company. The New York & Queens—Oh, no, I left that out.

Q. You revised the table with that elimination?

A. Yes, sir.

The Master: Is the table correct?

The Witness: Yes, sir.

Q. Taking the reports to the Public Service Commission for the year ending June 30, 1907, 1906-'07, what page did you use of that, and then give me the other pages for this Table 151.

A. For 1906-'07, Report to the Commission of Gas & Electricity, page 28; 1907, Report to the Public Service Commission for the half year, page 54G and 31257
55G; 1908, page 49; 1909 and 1910, page 56; 1911 to 1914, inclusive, page 67; 1915 to 1918, inclusive, page 68.

Mr. Chambers: I now offer in evidence those reports and pages so far as applicable to this table described by Mr. Goldthwaite.

The Master: They are already in.

Mr. Chambers: I offer this table in evidence as revised.

Mr. Ransom: I object to it on the grounds previously indicated, and further on the specific ground of pointing out the vice which underlies this exhibit taken in connection with the other one, the other one showing a theoretical plant capacity if all the machines and all the apparatus and all the plants were running all the time at maximum capacity, and this setting up a comparative standard of the gas manufactured under practicable working conditions.

The Master: Objection overruled.

31259 Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit AA133.

Q. Then you prepared another table, Mr. Goldthwaite, Table No. 152. What does that show?

A. Table 152 shows the relation of gas made to plant capacity, 1906 to 1918.

Q. Using the same companies?

A. Using the same companies?

Q. You have excluded the New York & Queens from that?

A. The New York & Queens is excluded.

31260 Q. What data did you use, what reports? The same as for the last exhibit—the same as for Table 150?

A. I just used the figures and the data in Tables 150 and 151.

Q. You did not use any reports, but you computed this from those two tables, Nos. 151 and 152?

A. That is correct—150 and 151.

Q. Those are Exhibits AA132 and AA133. Is this computation correct?

A. It is.

Mr. Chambers: I offer the table in evidence.

By the Master:

Q. What do these figures mean—per cent?

A. No, the gas made during the year divided by the daily capacity of the plant.

Q. What, for instance, does "237" mean in the 1906 and 1907 of the Central Union? What does that indicate?

A. They made during the year, 365 days, 237 times the daily capacity—that is, the daily capacity shown in the reports.

Mr. Ransom: May I just ask Mr. Goldthwaite one question on this? 31262

By Mr. Ransom:

Q. What you have done is to take the total plant capacity of each plant, assuming that all of the apparatus in the plant was run 24 hours in each and every day?

A. No, I did not assume anything. I took the figure as reported, of plant capacity, and divided it into the total gas manufactured of the plant for the year. What that figure of plant capacity means, exactly what it means—

Q. You do not know?

A. It is none of my business. 31263

The Master: You do not know?

The Witness: I do not know exactly, no.

Mr. Ransom: Well, I do not know what this table is now. It is utterly intelligible to me.

The Witness: It is the capacity as reported.

The Master: It is easy to find out. Let us take one of these lines here.

By the Master:

Q. Take the line of Astoria. Under 1906-1907 you have the figure "50"?

A. Yes.

Q. What does the number "50" on this table indicate; how do you get the number "50"?

Mr. Ransom: How did you get it?

The Master: How did you get it; how did you get your figure "50"?

A. The total output of that plant.

Q. The Astoria plant, the coal gas plant?

A. The coal gas plant.

Q. In 1906 and 1907?

A. It is one million and a fraction a thousand cubic feet—one billion and a fraction cubic feet. The daily
31265 capacity of that plant is 20,000,000 cubic feet. One billion divided by 20,000,000 is 50. That is how that figure was obtained.

Q. In other words, this table purports to indicate that the Astoria Company during the years 1906 and 1907 only did 50 days' work?

A. You might express it that way. That would be one way of stating it. I do not know whether that is an accurate way of stating it, but it is an approximation perhaps.

Q. Well, isn't that what this purports to show, that during the entire year they only turned out as much gas as they could have turned out with their plant
31266 capacity in 50 days?

A. That seems to be a reasonable inference, but I only calculated—

Q. What is it you want me to understand from this?

A. Perhaps the man who directed me to do it could tell you better than I.

Mr. Ransom: That is what I have been saying all along.

The Witness: I have taken the figures he has told me to use and performed the operation as explained on the table.

Mr. Ransom: The idea of putting these men up here to confiscate somebody else's property is ridiculous.

Q. All you can tell us is that you made up a table under Mr. Maltbie's direction which shows the total output of the plant divided by the daily capacity?

A. The total yearly output divided by the dairy capacity; yes, sir.

Q. Which shows this figure?

A. Yes, sir.

The Master: I will take it.

Mr. Ransom: I object to it most decidedly. 31268
It just shows the sort of thing that is being done here. We are obliged to work all night, night after night here, to check up on things which somebody who does not take the stand and does not submit to cross-examination has Mr. Goldthwaite and Mr. Pyle and Mr. Frank made up. Mr. Goldthwaite has just shown that he does not know what this is, and would not be capable of giving an opinion on it.

The Master: I will take it.

Mr. Ransom: I object to it on the ground that no foundation has been laid and on the ground that it is on an utterly incompetent and 31269
ridiculous theoretical basis.

The Master: All right. Objections overruled; mark it as an exhibit.

Mr. Ransom: For example, here is 1906 and 1907; they figure on a year, as though the Astoria plant had been in full operation throughout that year. The same situation in 1912 as to the water gas plant.

The Master: I see the situation, Judge Ransom; what is the use of wasting time?

Mr. Ransom: Well, it takes time to put these things on the record.

The Master: Have it marked.

Mr. Ransom: I except. It is just building a house of cards here.

The Master: The defendants have a theory of this case and I am going to let them develop it and see what is in it.

Mr. Ransom: It is not a theory, it is a mania for destruction.

31271 Mr. Chambers: I suppose that is too ridiculous to answer. He says we have a mania for destruction.

The Table No. 152 was marked Defendants' Exhibit AA134.

The Master: I do not know what the defendants are driving at, but I am going to see what it is.

Mr. Ransom: They build up straw men and then we knock them down.

The Master: All right, you can knock them down, that is all.

31272 Mr. Ransom: Yes, but they say on this theoretical basis—which no gas engineer would possibly assent to and which even this young man would not say was a sound basis.

Mr. Neumann: I want to ask Judge Ransom how much older than the young man on the stand he claims to be?

Mr. Ransom: Old enough.

Mr. Neumann: I have heard that long enough, about the young man—unless you claim to be a centenarian.

Q. Take Table 158, will you?

A. I have it.

Q. Did you prepare that table?

A. I did.

Q. What did you prepare it from?

A. The table consists of two parts. The first part I prepared from data in Table 151, already put in

as an exhibit.

Q. As Exhibit AA133. All right. Now, Part II.

A. Part II I prepared from data in Tables 156 and 157.

Q. Those are Exhibit AA125 and AA122, and what does that show?

A. It shows within the Consolidated System the relation—the ratio of gas made by the Consolidated Company and by the other companies combined.

Q. The other companies are the ones which you have already named? 31274

A. Yes, sir, the first part of the table, yes.

Q. And it excludes the New York & Queens?

A. Yes, it excludes the New York & Queens.

Q. Is the table correct as showing—

The Master: You have another part to it.

The Witness: I have not described the other part.

Q. Part B?

The Master: That shows the relation of gas sold?

The Witness: The relation of gas sold to the public. 31275

The Master: Between the Consolidated Gas Company and other companies?

The Witness: And other companies in the system.

Q. And you prepared that table, as you said, from Table 156 and Table 157?

A. Yes.

Q. Is that table correct?

A. It is.

Mr. Chambers: I offer the table in evidence.

The Master: He computed—

31276 George E. Goldthwaite, Direct.

Mr. Ransom (interrupting): And he copied correctly from other exhibits.

The Master: Yes, and when it is checked back it is computed from these reports, and this ought to figure back to the reports if these other tables are correct.

The Witness: It could be figured from the reports.

The Master: Have you figured it up from the tables?

The Witness: I figured it from the tables.

31277 Mr. Ransom: I object to this as incompetent, has no relation to any issue in the case, it does not bear on any issue here. We are not trying the Consolidated System. We are not trying the case of the other companies here. The percentage of ratio of comparison that this table tries to make with other companies based on unsound exhibits already in evidence, is not a proper way of proceeding.

The Master: Objection overruled.

Mr. Ransom: Exception.

The Master: Your own exhibits in a way show that you made part of the gas you sold, and must

31278 show the percentage of gas you make as against the total percentage of gas you sold.

Received in evidence and marked Defendants' Exhibit AA-135.

Q. Table 161?

A. Table 161, I have it.

Q. And you prepared that table?

A. I did.

Q. It consists of two parts, does it not?

A. Yes.

Q. What did you use in making that computation?

A In the first part, Part A, I computed it from the data in Table 150.

Q. That is Exhibit 132?

A. And Part B computed from data in Table 160.

Q. That is AA-124. Now, what does the table show?

A. The table shows in the first part the ratio within the Consolidated System of the manufacturing capacity of the Consolidated Gas Company and that of other companies to the total of the system as shown in these other tables which it is made up from.

Q. Is the computation correct? 31280

A. And Part B shows the same percentages for holder capacity. The table is correct.

Mr. Chambers: I offer the table in evidence.

Mr. Ransom: I object to it on the grounds previously indicated.

The Master: Objection overruled.

Mr. Ransom: Both as to manufacturing capacity and as to holder capacity, based on theoretical, academic and utterly unsound bases which no person who knows anything of the gas industry would suggest.

Table marked Defendants' Exhibit AA-136.

Q. Table 162? 31281

A. I have it.

Q. Describe it.

A. That is a computation of the relation of holder capacity to average daily sales to public of the Consolidated Gas Company alone, using for holder capacity in the first case the holder capacity as shown in the reports to the Public Service Commission minus 5,000,000 cubic feet according to Note A; and in the second place the holder capacity has certain other deductions that I was directed to make as shown by Note B.

31282 George E. Goldthwaite, Direct.

The Master: Who directed you to make these?

The Witness: Mr. Hine.

The Master: These deductions under Note B, Mr. Hine directed you to make?

The Witness: And under Note A; all deductions.

Q. You computed these from Table 156, which is Exhibit AA-125 and Table 160 which is Exhibit AA-124, did you not?

A. No; there is an error there. I computed it from Tables 157 and 160.

31283 Q. That is Exhibit 157, AA-122. Did you use Table 160?

A. I used Table 160.

Q. And that is Exhibit AA-124?

A. And the data in the note was given to me by Mr. Hine

Mr. Chambers: I offer the table in evidence.

Mr. Ransom: I object to that. That seems to me the most absurd thing yet.

Mr. Chambers: There is a typographical mistake here which we will correct.

Q. Now, that should be 1918, should it not?

A. Yes, Note B, item six, the date should be 1918

31284 instead of 1916.

Q. So it would show 1906 to 1918, inclusive?

A. Correct.

Mr. Ransom: I object to this, your Honor. I do not see how they can build a house of cards in this way. They take this company's property and whack it here and cut it there and reduce it here and increase it somewhere else and made deductions upon facts which do not exist, which they admit themselves are contrary to what does exist. Just look at the manner of the deductions, wholly unjustified, on which this exhibit is based.

31285

The Master: I will take it for the time being.

Mr. Ransom: I suggest you take it only for identification.

The Master: No, I will take it.

Mr. Ransom: I wish your Honor would merely mark it for identification.

The Master: No, I am going to take it.

Mr. Ransom: No foundation whatever laid for it, utterly incompetent. This young man is not qualified to do any such thing, and the person who gave him the instruction—

31286

The Master: But I am going to take it and mark it in evidence, because that will give you an opportunity to analyze it and prepare yourself for cross-examination of witnesses who will be called to support it, so you will know just what their theory is.

Mr. Ransom: Exception.

Marked Defendants' Exhibit AA-137.

Mr. Ransom: The complainant asks for the application to the defendants' case of the same rule of evidence which they invoked against the complainant. Those who raise the sword should perish by it.

31287

Mr. Chambers: May I concur in that, just that statement.

The Master: I think when a case has gone over six months now, started just six months ago today, it will be in the interest of justice to have, if necessary, a few weeks more of it and get in every theory which the defendants have in opposition to this case.

Mr. Ransom: But it must be a sound legal theory and proceed upon some manner of legal evidence.

The Master: This is all preliminary.

Mr. Neumann: Sometimes we do not know what sound legal theories are until the Supreme Court has passed on them.

The Master: Mr. Neumann insists on making speeches.

Mr. Chambers: If the Master please, that is all the tables of Mr. Goldthwaite, and that is all.

The Master: I will give them a chance to look over these tables before they examine. Now, get Mr. Pyle. I shall expect you to have Mr. Goldthwaite ready for cross-examination when
31289 Mr. Ransom is ready.

Mr. Ransom: I can cross-examine Mr. Goldthwaite now on the other matters that were put in.

The Master: I would rather have you look them all over and make just one job out of it.

Mr. Chambers: I will have him here when you request.

The Master: Tomorrow morning, I think, at 9:30.

31290 CLIFFORD H. PYLE resumed.

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Table 153, Mr. Pyle, did you prepare that table?

A. Yes, sir.

Q. And from what data did you prepare it, the reports of the companies?

A. The reports of the following companies to the Public Service Commission: Consolidated Gas Company, Astoria Light, Heat & Power Company, New Amsterdam Gas Company, Central Union Gas Com-

pany, Standard Gas Light Company and New York Mutual Gas Light Company.

Q. Just tell the Court what pages you used of each of those reports?

A. For 1908, from report to Public Service Commission, page 49.

Q. Of all companies?

A. Of all the companies. For 1909 and 1910, page 56 of the reports to the Public Service Commission; for 1915, 1911 to 1914 inclusive, page 67; for 1915 to 1918, inclusive, from reports to Public Service Commission, page 68 and Table 150. 31292

Q. That is Exhibit AA-132. Now, what does the table purport to show?

A. The table purports to show the maximum make, 1908 to 1918, of the Consolidated system, exclusive of the New York & Queens Gas Company.

Q. And is it correct?

A. It is.

Q. It shows a thousand cubic feet for twenty-four hours?

A. Yes, sir.

Mr. Chambers: I offer in evidence the reports to the Public Service Commission of the companies described by Mr. Pyle, and the pages for the years described by him and so much of it as is applicable to the maximum make shown in those tables. 31293

The Master: Yes, they are all in, all of them, for whatever purpose you require.

Mr. Chambers: I offer this table in evidence, and give counsel for complainant a copy.

Mr. Ransom: I call your Honor's attention to the hit and miss manner in which they make up tables of what they call the system. They have a system meaning one thing one minute,

and another thing the next. Here they exclude the Northern Union Company's plant, and they exclude the 14th and 42nd Street plants.

The Master: Yes, I see what they do.

Mr. Ransom: Which are plants which are making a very great deal of gas, and they are very important and absolutely indispensable parts of this company's system. One table they count 42nd and 14th Streets and Northern Union in determining what is the system and the next minute, to suit their purposes, they throw it out.

31295 The Master: Well, then, they have got something to explain.

Mr. Chambers: The Northern Union did not make any during this period.

Mr. Ransom: The 14h and 42nd Street plants certainly did.

The Master: Objection overruled.

Mr. Ransom: Exception.

Marked Defendants' Exhibit AA-138.

Q. Now, Table 154, did you prepare that table?

A. Yes, sir.

Q. And how did you make the computation?

A. I made it from Tables 150 and 151.

31296 The Master: What does this purport to show?

The Witness: This purports to show the relation of gas made to plant capacity, 1906 to 1918, for the Consolidated system exclusive of the New York & Queens Gas Company.

Q. And is the table correct?

A. It is.

Mr. Chambers: I offer the table in evidence.

The Master: Show it to Judge Ransom. I thought we had something like this before.

Mr. Ransom: I object to this on the grounds previously indicated, it is simply building a house

of cards on an unsound basis. The only difficulty is that when they come into this, the basis which appears in the prior exhibit is not disclosed, and this looks on its face perfectly regular, whereas, as a matter of fact, it is built on an absolutely unsound basis.

The Master: Well, we will get the basis of it before we get through. Objection overruled.

Mr. Ransom: Exception.

Marked Defendants' Exhibit AA-139.

Q. Table 155, did you prepare that table?

A. I did. 31298

Q. What data did you use?

A. The same sources as for Table 154, from data in Tables 150 and 151.

Q. What does this purport to show?

A. This purports to show the relation of gas made to plant capacity, Consolidated system, exclusive of the New York & Queens Company and of the Northern Union Gas Company.

Q. Is it correct?

A. It is.

Mr. Chambers: I offer the table in evidence.

Mr. Ransom: I object to it on the ground that it is simply taking a part of the plants of the 31299 complainant company, they have left out two plants that are very essential and are producing large quantities of gas and have in winters outside of the war period, and on the further ground of the obvious and no doubt unintentional incompleteness of the table, both this table and all of them; they have shown nothing with respect to any portion of 1919, which, of course, is the conditions under which we are operating today, and more nearly approximate the conditions under which the company will have to operate in the

future. They have very carefully stopped in 1918.

The Master: Objection overruled.

Mr. Ransom: Exception.

Marked Defendants' Exhibit A.A-140.

Mr. Chambers: That is all.

The Master: I am going to reserve cross-examination of this witness until the complainants have had a chance to look over these exhibits.

Mr. Ransom: I would rather go ahead with
31301 Mr. Goldthwaite and Mr. Pyle today than to have the case break down, but I would prefer to reserve it.

The Master: Have you any other witnesses, Mr. Chambers?

Mr. Chambers: Yes.

The Master: Can you be prepared to go on with Mr. Goldthwaite at two o'clock?

Mr. Ransom: I would rather go on with Mr. Goldthwaite at two than with Mr. Pyle.

The Master: All right.

31302

WILLARD F. HINE, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Hine, where were you educated?

A. University of Wisconsin.

Q. When was that?

A. I graduated in 1907.

Q. With what degree?

A. Degree of Bachelor of Science and Electrical Engineer.

Q. After you left college where did you go?

A. I went with the Laclede Gas Light Company, St. Louis, Missouri.

Q. What did you do there?

A. While I was with them, first I was at their station A plant, as assistant to the superintendent, in charge of engines and boilers and power plant equipment at this station. Later I was in charge of the coal gas plants at this station. There were two coal gas houses there with a total daily capacity of 3,000,000 cubic feet. Then for a short time I was in charge of the water gas operation at this plant. 31304
That is a plant having a capacity of from 5,000,000 to 8,000,000 cubic feet per day. That covered a period of about two years. Then I left the company, and for about three or four months was with the Kettle River Quarries Company of Madison, Illinois, as assistant superintendent in charge of night operation of the plant. Then I returned to the Laclede Gas Light Company as assistant to the chief engineer, and was in this position for two years. As assistant to the chief engineer I was in charge of the drafting room, and in general charge, under the chief engineer, of contruction work done by the company, and the design work done there, and all the work going 31305
through his office I was expected to go over so I would know what was going through the office and be familiar with all the work done. Then in 1911 I came with the Public Service Commission for the First District of the State of New York as chief gas engineer, which position I occupied until March of last year. While in that position I was in charge of all their gas engineering work, appraisals of companies, investigations of service, standards of service; was in charge of the testing laboratories maintained by the Commission for the testing of the quali-

ties of gas. I also did some miscellaneous outside work, made an appraisal of the property of the City Gas Company of Norfolk, Virginia; also made a general investigation of that company's operations; made a partial inventory and appraisal of the property of the Haverhill Gas Light Company, of Haverhill, Massachusetts; made an appraisal of the Minneapolis Gas Light Company, of Minneapolis, Minnesota—and various other small outside jobs. Since I left the Commission I have been associated with Milo R. Maltbie in public utility work, made an appraisal of
31307 the property of the Albany Gas Company, the Utica Gas Company, and then engaged in this Consolidated Gas case, and in various other cases relating to utility work.

Q. And you have had, as you say, practical experience in the manufacture of gas?

A. I have.

Q. Both water gas and coal gas?

A. Yes, sir.

Q. Have you made an examination of the plant of the Consolidated Gas Company?

Mr. Ransom: I object to that. I don't think he can answer that question so broadly.

31308 The Master: Let me ask you, Mr. Hine. When you were with the Public Service Commission was it part of your duty to check up these reports that came in?

The Witness: No.

Q. When you were with the Public Service Commission, you had more or less to do with the gas companies operating in the City of New York?

Mr. Ransom: I object to that as too vague and indefinite.

The Master: I will allow it.

A. Yes.

Q. How long have you been working on the Consolidated Gas case?

A. Why, I think since the 1st of July, or some time in June.

Q. Approximately you started about then?

A. Yes.

Q. And you have been working on and off since then?

A. Most of my time has been on the Consolidated Gas case.

Q. Are you familiar with the different plants of the Consolidated Gas Company where gas is made 31310
here in the City?

Mr. Ransom: I object to that as a leading question and calling for a conclusion. As a matter of fact the witness has not had enough contact with these plants to have a bird's-eye view of it.

Mr. Chambers: The same kind of knowledge that you have of the law, a bird's-eye view.

The Master: Objection overruled.

A. Yes.

Q. Now, Mr. Hine, take this Exhibit AA-126, these maps that have been described here by Mr. Pyle —these maps were prepared under your direction and supervision, were they not? 31311

Mr. Ransom: I object to that. The testimony is directly to the contrary. The testimony was that they were prepared under the direction of Milo R Maltbie.

The Master: Objection overruled.

A. They were not prepared under my direction. I have gone over the maps since that time, and where any changes were involved as relating to Exhibit 178, those maps correspond with my ideas, and are just the same as though they were made under my directions, because I talked these matters over before the directions were given.

31312 Willard F. Hine, Direct.

Q. What is considered on the maps, only land, isn't it?

A. Only land.

Q. What do these purport to show generally?

Mr. Ransom: Objected to as incompetent. The papers speak for themselves, and he didn't have anything to do with preparing them.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. They show what in my opinion represents land that was used and useful in the gas business either
31313 during the entire period from 1906 to 1918 or during a portion of that period.

Mr. Ransom: I object and move to strike out the answer on the ground that there is no basis shown, no qualification shown for him to undertake to testify as to the use or the necessity for the use of the properties of this complainant from 1906 to the present time, or at any other time. How can a witness, by a question like that, a witness who was not in the town at the time, who has been here only since 1911, and is not qualified to express such an opinion even as to the period during which he has been here—

31314 The Master: How can Mr. Hine say what was used and useful in the gas business in 1906, Mr. Chambers?

Q. You have studied these statistical tables, have you, Mr. Hine?

The Master: What statistical tables?

Mr. Chambers: The ones that are in evidence already.

The Master: No, I'm not going to let you build that up. You have to do better than that.

Mr. Ransom: I move to strike out the answer.

The Master: No, I will let it stand.

Mr. Ransom: Exception.

Q. What study have you made with regard to this plant during all these years?

Mr. Ransom: Objected to. That is not a matter of study. It is a question of what existed and what were the conditions. This witness knew nothing about those, he could not possibly testify on those subjects, and anyway, even as to the other years as to which he is testifying, he has not shown qualification. Use is not a matter of opinion. Use is something as to what is there, what buildings are there, what is doing on there, what is being done, what part it plays. 31316
He cannot testify to that for any of these years, I submit.

The Master: Objection sustained.

Mr. Chambers: That he can't state what study he has made?

The Master: Oh, I will let him say what study he has made.

Mr. Ransom: I object to that as immaterial, what study of these statistical tables he has made.

The Master: Let us see.

Mr. Chambers: I will do it in a different way. I will take each one separately and show what knowledge he has. 31317

Q. Take Map No. 1, Mr. Hine. That is the property on Hester Street and Elizabeth, is it?

A. It is.

Q. Lots 1 and 5. Now, that is the property found on Exhibit 178—

The Master: Don't let us waste any time in having this witness say that he admits that some property is used and useful in the gas business. Let us get down to those properties which you say are not used and useful in the gas business.

Q. What is there, Mr. Hine?

Mr. Ransom: I object to that as immaterial.

The Master: Is it your claim that the property is not used or useful in the gas business?

Mr. Chambers: No, useful for the entire period.

The Master: Objection sustained.

Q. Are you able to say, Mr. Hine, whether this property shown on sheet No. 1, Lot 5, in Block 230, was used and useful for the period 1906 to 1918?

Mr. Ransom: I object to that as immaterial.

The Master: I will sustain the objection, be-

31319 cause this witness was not in New York.

Mr. Chambers: He has made a study.

The Master: I don't care whether he has made a study or not.

Mr. Chambers: That doesn't make any difference, he could have come in here and made a study if he had never seen the plant.

The Master: Objection sustained.

Mr. Chambers: Exception. May I just submit here, if that is so, you never could call an expert, you would have to have a man who had been with the Gas Company during those years.

The Master: I don't know what you have to

31320 do, I know I am not going to let Mr. Hine say whether this property was used or useful in the gas business in 1906, when he was not here, just from some data that he may have seen.

Mr Chambers: He can say what study he has made and whether he has reached that conclusion.

The Master: No, sir; I will not take it at all.

Mr. Ransom: At the time this property was used he was in the University of Wisconsin.

The Master: I will not take opinion evidence on this at all. I will let him say that he has

gone to certain plants and has seen what was going on there. I am not going to let him say whether they are used or useful, I am going to say that.

Mr. Chambers: Don't you see how far-reaching that is.

The Master: Sure I do.

Mr. Chambers: He couldn't testify in the Albany case, or the Minneapolis case, or any other case.

The Master: He could not, if I were the judge. 31322

Mr. Chambers: You let Mr. Allison and these others come in here that were not here during 1918, when they testified to the values. They came in here in 1919.

Mr. Ransom: Allison did not testify to values.

The Master: Don't let us get into any argument. I am pretty clear as to what Allison testified to.

Mr. Ransom: I don't see what the controversy is about Lots 5 and 1 in Block 239. There is no property there about which there can be any dispute.

The Master: Nor do I see why you take occasion to make any remarks at this time. 31323

Q. Do you know, Mr. Hine, what Lots 1 and 5, Block 239, were used for during the years 1906 to 1918, from an examination of the records of the company?

Mr. Ransom: I object to that as immaterial.

The Master: Objection sustained.

Q. Do you know from personal knowledge for part of the time what that was used for?

A. Yes, sir.

Q. How far back were you in here in New York so that you know that?

A. Well, I would say that this piece of property I knew from 1911, sometime in 1911.

Q. And you were then with the Public Service Commission?

A. I was.

Q. Are you able to say whether that property, Lots 1 and 5, Block 239, was used and useful in the gas business from 1911 to the present time?

Mr. Ransom: I object to that as incompetent. It does not appear that the witness has visited the property.

31325 The Master: Objection sustained, not upon that ground, but upon the ground that it is for me to say whether it was used or useful. I will let the witness state what he saw was being done there.

Mr. Chambers: You are not going to take opinion evidence on whether it is used or useful?

The Master: Certainly not.

Mr. Chambers: You have allowed Mr. Wood here, and you have allowed Alrich—

The Master: I have allowed Mr. Alrich to say just what was on each piece of property shown on Exhibit 178.

Mr. Ransom: And what was done there.

31326 The Master: What was there. He gave me a picture of the land and the buildings on it, and you went at him on cross-examination, and Mr. O'Brien, to show there were a lot of ramshackle buildings that were not used for anything. His testimony on the one hand is that certain use was being made, and your contention on the other hand is that they were dead or dormant and not being used. It is for me to say whether they were used and useful in the gas business.

Mr. Chambers: I submit that the opinion of gas engineers as to gas property—that is the whole theory of the complainant's case, as to whether it is used and useful. I submit that is competent testimony.

The Master: I won't receive it in this case.

Mr. Chambers: Whether your Honor is bound by it is another question.

The Master: I won't receive it.

Mr. Chambers: I take an exception.

Q. Prior to your acquaintance with the property, have you considered the entire gas plant of the com- 31328
plainant from all angles, from 1906 to 1918, and then are you able to say from your study of the tables in evidence whether or not this particular piece of property, Lots 1 and 5, Block 239, was used and useful from 1911 to 1918, inclusive?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to say from your study of the company's property, the amount of gas that was made, the number of consumers and the other information which is here in evidence, whether or not those two lots were used and useful in the gas business from 31329
1906 to 1918, inclusive?

Mr. Ransom: Objected to on the same grounds.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Sheet 2, Lot 17, Block 689. Are you acquainted with that property there, Mr. Hine?

Mr. Ransom: Objected to unless the time is fixed.

The Master: He asked him, "Are you acquainted," which indicates to me the present tense.

A. Not at the present time, no.

Q. When were you first acquainted with that property—speaking of the land all the while? All my questions are directed to the land.

Mr. Ransom: I object to the question. Personal acquaintance is a very vague and indefinite thing.

The Master: I will allow it.

Mr. Ransom: If the witness is able to swear that he was there at a particular time, and saw particular things, that is different.

31331 The Master: The question is allowed.

Mr. O'Brien: Your Honor, I think on the questions that have been raised over the objections I would like to be heard; because it is a subject of opinion testimony based upon all these sources of information.

The Master: All things are possible, Mr. O'Brien; but I do not think it is possible to show me that opinion evidence of this kind is proper. If you can I will be glad to see it.

Mr. Chambers: How can you tell whether it is used or useful without being guided by gas engineers? You are not a gas engineer; that is a profession by itself.

31332 Mr. O'Brien: Mr. Allison, for instance, was called, who never went over the plants of the company, and he gave a statement of his opinion from general knowledge. That is not particularly analogous to this situation, but it shows what a range they took on the question of whether a building was used or useful as of a certain date; and a man with certain information can form just as good an opinion, if his information is reliable, as if he were present on the spot where the building stood.

The Master: At this time I will not take it.

Mr. Chambers: The question is unanswered.

The Master: What was the question?

Mr. Ransom: Whether he was personally acquainted with this property.

The Master: Yes, I will allow it—at what time he was personally acquainted with Lot 17, Block 698.

A. Well, I have seen that property; but I cannot state when it was, and I am sure I do not place any dates.

Q. Did you make any study of the use of that land 31334
in the gas making business of the Consolidated Gas Company?

Mr. Ransom: Objected to. This is not a parcel owned by the complainant, nor used for some years.

The Master: I will sustain that objection.

Mr. Chambers: Exception.

Q. Was that land, Lot 17, Block 689, in your opinion used and useful from 1906 to 1913, inclusive, in the gas making business of the complainant company?

Mr. Ransom: Objected to on the grounds previously stated.

The Master: Objection sustained. 31335

Mr. Chambers: Exception.

Q. Are you able to say whether or not, or are you able to express an opinion, that land Lot 17, Block 689, was used and useful in the gas business of the complainant company from 1906 to 1913?

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Page 3, take Lot 12 of Block 690. Are you familiar with that piece of property—or were you familiar with it?

Mr. Ransom: Objected to as immaterial.

The Master: Which is it?

Mr. Chambers: Were you familiar with it?

The Master: When?

Mr. Chambers: And if so, when?

A. I have seen that property several times, but I do not know in what periods.

Q. Long back, prior to 1918?

A. Yes, I would say probably in 1912 or 1913.

Q. Have you made a study of the property that in your opinion is necessary for the making of gas in
31337 the City of New York by the complainant company, from 1906 to 1914?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

The Master: Mr. Chambers, there is not any sense in repeating these questions as to the various lots. I have given you a ruling on this proposition, that I will not take this kind of evidence. If you want to contest any statement made by Mr. Alrich as to the use to which any particular piece of property was put, at any particular time, by this or any other witness, I will let you ask
31338 it. I will not take opinion evidence, and I think I have permitted you to ask sufficient questions to give you the benefit of an exception to my ruling.

It is perfectly clear on this record that I will not take opinion evidence as to what piece of property was used and useful in the gas business at any time; and the only evidence I will take is the testimony of the witness who saw the plant being used, who can tell us that they were making gas or were not, who can tell us they were doing something else there, or just what they were doing, so that I can reach a conclusion as to

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whether it was or was not used and useful in the gas business. Do not let us waste any time on it.

Mr. Chambers: There is no contest on this.

The Master: All the more reason for not wasting time on it. I see on this Plate 3 certain lots marked in a way indicating, if I understand the symbols, that they were not used and useful.

Mr. Chambers: Yes.

The Master: If you have anything, any evidence that you can bring out by Mr. Hine, as to why you make that claim or what it is based on, I will let you ask it, or let you ask him a question about it.

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Mr. Chambers: I am asking for his opinion, that is all.

The Master: I will not take the opinion. I think you have had enough rulings to make it clear that I will not take opinion evidence, and you are protected by an exception. If I am in error about it this case will be reversed and the burden of that will be on the complainant. You cannot do any more than press your offer on the theory that you believe protects your clients; and I will not receive it, then the responsibility is mine and not yours.

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Mr. Chambers: The Court's present ruling now recalls the rules to the contrary that I know of in these other rate cases—contrary to the complainant's own theory and the complainant's own testimony.

The Master: Where?

Mr. Chambers: Why, they submitted here Mr. Alrich and other witnesses to show that certain pieces of property were used and useful.

Mr. Ransom: To show facts.

The Master: Mr. Alrich said, for instance, on a certain block there was a building at one end

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which had some lumber in it, some repair material, too; another building at another end that had some pumping material in it; another building that had government material in it; another building that had something else. Then on cross-examination you and Mr. O'Brien bring out the material that is in some of these buildings is junk, and they have not made gas except for three days at some plant, or not in a long while. I have taken Mr. Ulrich's testimony and I have clearly in mind the claims made pro and con on this proposition that the plant at 14th Street or

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42nd Street is used and useful in the gas business, and Mr. Woods insists that they needed it as a reserve station.

Mr. Ransom: And are using it.

The Master: You apparently are going to take the position that that is not so, that they have ample capacity in their other plants. In the last analysis it is for me to say whether the complainant's claim, based upon the statement of fact of what is there and what use they make of it, justifies a conclusion whether it is used and useful or whether I shall reach a conclusion on the evidence.

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Mr. Chambers: You will not permit any gas engineer, then, except those connected with the company, to say whether a piece of property is used and useful?

The Master: I will not let any engineer say whether it is used and useful, whether in the employ of the Consolidated Gas Company or any other.

Mr. Chambers: You let the complainant state it.

Mr. Ransom: I do not think that statement is warranted.

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Mr. O'Brien: Take Mr. Alrich's position: It was only a statement of the inanimate equipment, not shown to be of any use, as he went along and spoke about this or that piece of property.

Mr. Ransom: He did on cross-examination. You brought out the use. He showed the buildings and you brought out what was being done there.

The Master: As a matter of fact, Mr. Alrich was called, if my recollection is correct, to prove certain land claimed to be used. That was the Exhibit 178. There was objection to that 31346
exhibit just as there was to some of your tables that I have permitted in here today, just as there was to these maps, and I allowed it as a picture of the land that the company claimed it used. It stopped there. Then on cross-examination you and Mr. Chambers spent over three weeks, perhaps more, it may have been four weeks, in bringing out from the witness the particular character of each building and on which part of the ground, and attacking it on that ground, bringing out that certain stuff was useless and it did not mean anything. I do not recall any engineer that they have called to say that in his 31347
opinion a certain block is used and useful in the gas business.

Mr. Clark: Mr. Woods testified to the 14th and the 42nd Street stations as used and useful and necessary.

Mr. Ransom: He showed that they had to have the plants.

Mr. Chambers: Just a minute. You take the opinion of experts on the value of real property, do you not?

The Master: Yes, sure, because there is no other way.

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Mr. Chambers: Why do you do that?

The Master: Because there is no other way that I can reach a conclusion of what the value is.

Mr. Ransom: The value is a matter of opinion.

Mr. Chambers: Won't you just subside a minute?

Mr. Ransom: No, I won't.

Mr Chambers: Does counsel for the complainant claim here that no gas engineer, if he is qualified, after he has studied the situation,
31349 may testify as to whether a piece of property is used or useful? Is that his claim in this case? I think it is fair for us to have that—that no gas engineer's opinion evidence on property used and useful is competent; is that what he claims?

The Master: I do not care what he claims, I tell you what I am going to allow. I am not going to allow any such question as has been put to Mr. Hine. I will only allow a man to state that he visited a certain piece of property, that he saw what was there, that this piece of property is not in fact being used for any purpose, or that it is not in fact being used to make gas.
31350 I will have him describe what use is being made of it. I shall probably go so far as to permit an expert to say—if that is what is in your mind—that they do not need the 14th Street gas.

Mr. Chambers: That is all that is in my mind.

The Master: Taking issue with Mr. Woods as to that reserve capacity.

Mr. Ransom: That is a matter of computation.

The Master: I will not let you ask Mr. Hine whether it is used and useful. If you have a witness that is prepared to say "I know the 14th Street plant, I know the 42nd Street plant; I

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have looked at their reports, I know their capacities, I have studied their capacity; as I read it they need so many cubic feet a day, their maximum peak has been so much; these plants are not necessary, they do not need them for their capacity"—I may do that.

Mr. Chambers: That is what I was aiming to do. It comes down to that question.

The Master: That is a little different proposition.

Mr. O'Brien: It is a mathematical deduction.

The Master: Yes, I may allow something of that kind; but not this kind of examination as 31352
to what property is used and useful. I will let a witness state that this property on a certain corner they do not need, and the question, "Well, why don't they need it?" and the answer, "Well, because they use that other piece across the way."

Mr. Ransom: Well, that is an operating question and not a question of opinion evidence as to the use of property.

The Master: I do not care whether you term it operating or opinion as to use, but it is my idea to allow in such evidence as will be used and useful in this case.

Mr. O'Brien: After all, your Honor, you 31353
would have to depend on the coefficient of an engineer's judgment to finally settle that question.

The Master: I do not know whether I will or not.

Mr. O'Brien: The accuracy of his judgment as shown in cross-examination you would perhaps determine in one way or another; but after it is all said and done, the coefficient that makes that problem complete would be the judgment of a gas engineer. Why, you will recall

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Mr. Woods took us into Utopia with an imaginary plant of a certain capacity.

The Master: But do not forget this: If Mr. Woods is the operating engineer of the Consolidated Gas and says "I need this plant," and gives his reasons for it, and there is a reasonable basis for it and there apparently is justification for it, and then the defendants bring an expert who says, "Why, I would not need that plant, I could do without it," and there is some reasonable justification for that, I probably would not want to set my judgment against them or decide which
31355 man is right, but I would say, "Well, they are both probably right in their judgment and I am going to let the Gas Company run it the way he thinks it ought to run it." I am not going to say that they ought to run it as Mr. Edgerton thinks they ought to run it. I do not speak humorously.

Mr. O'Brien: You touched the chord of chivalry, your Honor; you are kind of standing up today. You thought I hit someone below the belt yesterday.

The Master: Yes, I did.

Mr. O'Brien: You are kind of going back on
31356 the old code now.

The Master: No, I will stick by my proposition, and any time I think somebody is hitting below the belt I will call "foul."

Mr. Chambers: I think you will see this in the light that I see it, and perhaps it may be put in a little different way. Take the Albany case—

The Master: No, let the Albany case alone, and the Kings County case and the Minneapolis case—let them rest.

Mr. Chambers: This will illustrate it.

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The Master: Because, as Mr. O'Brien has it somewhere on the record, I am not a respecter of persons or precedents.

Mr. O'Brien: Well, you did not respect Judge Greenbaum's decision.

The Master: No, not unless it agrees with mine.

Mr. O'Brien: But you bow before the fetish of Judge Cardozo.

The Master: No, before it agrees with mine, that is all. In other words, Mr. O'Brien, I do not care who the man is or what the point is, whether I am attorney in the case or am the 31358
judge; if he reached a conclusion that is not in accord with my judgment I may bow to the decision but it never changes my judgment.

Mr. O'Brien: If a given judge is nine times out of ten and customarily accurate—

The Master: Who says he is customarily accurate?

Mr. O'Brien: If a given judge, I say—then you have more respect for him.

The Master: Where is the test?

Mr. O'Brien: Take Judge Greenbaum.

The Master: Where is the test that he is customarily accurate? 31359

Mr. O'Brien: I am speaking of your experience and how you judge him.

Mr. Chambers: The opinion of the bar.

The Master: That is not the test at all. The proposition is whether in a given case Judge Greenbaum has disposed of a question as I would have disposed of it. I am not bound by his ruling in this case and I simply follow him insofar as the rule appeals to my reason. The kind of evidence that Mr. Chambers has offered here is not allowable and I would not take it if every judge in the land took it.

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Mr. O'Brien: Would you not take the kind of man who is generally sound and reasonable rather than erratic and alcoholic? Wouldn't you take that man? You certainly would.

The Master: I never analyzed it. When I see that a judge has reached a conclusion or a certain result I never analyze his age, his alcoholic condition, or anything else. Either that result appeals to my sense of the reasonable and what is right, or it does not. I understand and appreciate very frequently the judges in the State Court and in this court are bound by the precedents of

31361 the Court of Review and there is not any sense of flying in the face of them. If I was a judge of the State Court, no matter what my personal opinion would be, if I am confronted with a decision of the Appellate Court to which my decision must go for review, I am not so foolish as to fly in the face of a certain reversal. I might put myself on record as being entirely in disaccord with those judges, but I do not have to follow it.

Mr. Ransom: May we not proceed with the case?

Mr. O'Brien: There is just another thing, a

31362 judge who is known to be senile, whose kidneys are not working right, whose liver is bad and whose temperament is shown all through his work, and another a judge whose career at the bar has been balanced all the way through and whose opinions and actions have won respect.

Mr. Ransom: I object to the time killing of these defendants.

Q. Now, take Sheet 3 of Exhibit 178, will you, Mr. Hine. Have you the original 178?

A. Yes.

Q. Do you know what plant that is of the Consolidated Gas Company?

Mr. Ransom: What block are you referring to?

Q. What it is called?

Mr. Ransom: What block are you referring to.

Mr. Chambers: Sheet 3.

The Master: The whole plant on Sheet 3. 31364

A. I do.

Q. What plant is that called?

A. 14th Street plant.

Q. And do you know what kind of gas they made there the past several years back?

A. Coal gas.

The Master: Is it equipped for anything but a coal gas plant?

Mr. Chambers: When they did make gas, I am referring to.

Mr. Ransom: They are making gas now.

The Master: What is it equipped for, coal gas or water gas? 31365

The Witness: Coal gas.

The Master: It is a coal gas plant?

The Witness: Yes.

Q. That is what I refer to. It is a coal gas plant, and it was built for that?

A. I assume so, yes.

Q. Have you made an examination of that plant?

A. I have.

Q. Will you please state what examination you have made of it?

Mr. Ransom: And when? I object to the question unless he specifies the time.

The Master: It is not objectionable necessarily, but I will let the witness state when he made this examination.

The Witness: The examination that I made of this property was sometime in July or August of last year, I believe, or thereabouts.

Q. What examination did you make at that time?

A. I walked through the plant, viewed the buildings and apparatus in the plant.

31367 Q. And your acquaintance with that plant goes back how far?

Mr. Ransom: I object to the term "acquaintance," it is altogether vague. How can he have acquaintance with a plant?

The Master: I will allow the witness to answer. Do not waste time on objections that do not reach the issue.

A. I believe I visited that plant first in 1912.

Q. And from that time down to the examination in 1919, were you more or less familiar with it?

A. Yes.

The Master: You mean by that that you went

31368 there occasionally?

The Witness: I have been there two or three times.

Q. And you remember its condition in 1911, too?

The Master: He said 1912 he went there.

Q. 1912?

Mr. Ransom: I object to it.

A. Well, not specifically.

Q. Did you see what was going on in 1912, somewhat?

A. Yes, I saw what was going on there. They were manufacturing gas at that time. I cannot sepa-

rate in my mind just the conditions at the various times that I have been there.

Q. You are acquainted with all the gas plants of the Consolidated Company now, where they make gas?

A. I am.

Q. And with the Astoria Company, too?

Mr. Ransom: I object to that form of question, the idea that a man may walk by a plant or walk through a plant and say that he is acquainted with it is ridiculous.

The Master: I am going to let him say it. 31370

Mr. Ransom: If it means anything to your Honor, it does not to me.

The Witness: Yes.

Q. Are you familiar with the cost of operating the plants of the Consolidated Company? Have you made some study touching on the cost of operating?

Mr. Ransom: Objected to, incompetent.

The Master: Objection overruled.

A. I have made studies of the costs.

Q. And the cost of operating those plants?

A. Yes.

Q. Now, the cost of operating this plant, particularly the 14th Street plant, covering what period of 31371 time does that examination of the cost extend, that you made?

A. 1906 to 1918, inclusive.

Q. And that cost was prepared by whom?

A. I believe it was prepared and put in evidence by Mr. Frank.

Q And you have examined that?

A. I have.

The Master: You mean the cost as shown by the books?

Mr. Chambers: Yes.

Mr. Ransom: That is not cost as shown by the books, your Honor.

Mr. Chambers: Oh, yes, it is.

Mr. Ransom: It surely is not. He left out everything that he saw fit—no taxes, no renewals and replacements, millions of dollars left out each year.

The Master: I will see what it is all about.

Q. Now, the table to which you referred, is it Defendants' Exhibit AA131?

A. Yes.

31373 Q. Now in evidence?

A. Yes, sir.

Q. And that purports to show cost of production and storage of gas at each station of the Consolidated Gas Company?

A. Yes, sir.

Q. And that covers all the plants of the Consolidated Gas Company?

A. Yes, sir.

Q. And as you understand it, that was taken from the books of the company?

A. Yes, sir.

Q. Now, did you make quite an examination of

31374 that cost of production? In short, you examined it?

A. I did.

Q. And examined it with a view of ascertaining what plants the company would need, the Consolidated Gas Company would need, in its gas business?

Mr. Ransom: I object to it, has no bearing on what the company—

The Master (interrupting): I will allow it.

Mr. Ransom: Exception.

A. I did.

Q. And that covers from 1906 to 1918?

A. It does.

Q. And if those figures are correct in that table Exhibit AA31, as to the cost of production and storage of gas at each of those stations from 1906 to 1918, you then are able to say, are you, what manufacturing plants the company would need during that time, if the figures are correct?

Mr. Ransom: I object to it as incompetent.

The Master: Objection sustained.

Q. Now, what else did you use, Mr. Hine, in determining whether certain plants were needed, outside of the cost of production and storage of gas, as shown by this table, or this Exhibit AA131? 31376

A. Statistical data taken from the reports of the various companies that are tied together in this system relating to the manufacturing capacity, holder capacity, gas sales and so forth.

Q. Those are the tables that were offered in evidence from 150 to 162?

A. Yes.

The Master: Mr. Chambers, I must interrupt you here. Do I get a correct impression from the inquiry of the witness that this witness is of opinion that there is ample capacity for the manufacture of gas by this and its system companies as I call them, without this plant. Is that the idea? 31377

Mr. Chambers: Yes, during this period.

The Master: The cost of production doesn't cut any figure, doesn't make any difference.

Mr. Chambers: Well, yes, if it costs them an enormous sum to produce gas at this plant.

The Master: That is argument. Now, what I will let you ask this witness is whether he has read the testimony of Mr. Woods, and whether he takes issue with Mr. Woods, and why, and let him explain.

Mr. Chambers: That is all I am coming to. I want to show all the things he did do.

Q. You are familiar with these different tables we have just spoken of, 150 to 162?

A. I am.

Q. And you took into consideration the figures therein stated?

A. I did.

Q. And you have read substantially all the testimony in this case relating to manufacturing of gas?

Mr. Ransom: Objected to, incompetent.

31379 Q. (Continuing.) Say, for instance, Woods' testimony?

Mr. Ransom: How do we know? Let him ask him whether he has read Woods' testimony.

The Master: He is asking that.

Mr. Ransom: No; he is asking whether he read substantially all the testimony in the case relating to the manufacture of gas.

The Master: He said particularly Woods' testimony.

Mr. Ransom: Has he read Woods' testimony?

Mr. Chambers: Just a minute now, take it easy.

31380 Q. Mr. Hine, you have read portions at least of Mr. Woods' testimony?

Mr. Ransom: Objected to as immaterial.

Q. (Continuing.) Given in this case?

The Master: I will allow it.

A. I have.

Q. So far as it related to manufacturing cost?

Mr. Ransom: Objected to, incompetent. How can he tell whether he read it.

Q. You intended to read it all, didn't you?

Mr. Ransom: Objected to, incompetent, no bearing on this case.

The Master: I will allow it.

A. It is my opinion that I read all of Mr. Woods' testimony.

Q. As given in this case?

A. Yes, so far as I could find it.

Q. Now, take Mr. Alrich's testimony; you were in court some of the time when he was testifying?

A. I was.

Q. And you were in court some of the time when Mr. Woods was testifying?

A. I was.

Q. And you have read, have you not, all of Alrich's 31382
testimony?

A. I think I have.

Q. So far as you know, you have?

A. I have.

The Master: Well, let us cut this short.

By the Master:

Q. Mr. Hine, have you studied the figures showing the quantity of gas required to be delivered to consumers on the Consolidated system?

A. I have.

Q. Do you know how much gas they supply to their consumers?

A. I have studied that. 31383

Q. Do you know the maximum amount required during the heavy winter days?

A. Well, I have arrived at the maximum, but it is more than the maximum really required by the system, for I have got the maximum for each company. I have made a study of those maximums from the data I could secure, but not the send-outs.

Q. I take it from what you have said, that you have not given the total maximum send-out on the heaviest day of the last few years?

A. More particularly the maximum make, counting all the companies on the maximum days during the last few years.

Q. Haven't you taken into account at all how much gas they need to send out?

A. Yes, but that make has necessarily taken care of that send-out.

Q. No; but what I am getting at is this: You know how much gas they have got to have to deliver to their customers, is that correct?

A. During the year, yes.

31385 Q. Is it necessary in the operation of a gas plant to have any reserve capacity?

A. It is.

Q. How much?

A. Well, that would depend upon the particular plants, the period of the peak load, and what you mean by reserve.

Q. Well, I am going to let you answer this one question: In your judgment, what ought to be the reserve capacity for the Consolidated system? Mr. Woods said it was something like seventeen per cent, didn't he?

Mr. Ransom: He said the reserve capacity
31386 ought to be the capacity of the largest unit, or ought to be twenty-five per cent.

The Master: Yes. That may be. I am not entirely clear, but Mr. Woods testified in substance that they had less reserve capacity, including the 14th Street and 42nd Street plants than in his judgment they ought to have, and I am going to let Mr. Hine or any other engineer the defendants have got, meet that issue and say in their judgment you do not need as much reserve capacity as Mr. Woods testified.

Mr. Ransom: At the time he testified he said they had 17.2 per cent, and they ought to have 25 per cent, and since that time the reserve has disappeared.

The Master: I don't care anything about that, but that is substantially my recollection of it, that Mr. Woods said they had substantially 17.2 per cent, and they had less than they ought to have, and if Mr. Hine disagrees with him, I will take Mr. Hine's statement. That is what you are trying to get at. Why not get at it?

Mr. Chambers: I want to get at these pieces 31388
of property that we say are not needed, that is all, after he has studied it for these years, from the facts, if I can get at the facts.

Q. You say they don't need these plants, don't need this capacity. That is the only theory on which they need it, and I am going to let you go ahead.

Mr. Chambers: We say where these plants cost so much they should not try to operate them or carry them.

Mr. Ransom: These plants save the consumers of this town—

The Master: Don't let use have this argument. I have told Mr. Hine what I would like to have 31389
him say, and he can give his reasons for it and spread his reasons on the record, and then complainant's counsel can cross-examine him. He can give every reason he has why they don't need that reserve.

Mr. Ransom: What reserve don't they need?

The Master: He has not said yet. Mr. Hine, what, in your judgment, ought this Consolidated Gas Company have as reserve capacity?

Mr. Ransom: Over and above its maximum daily send-out.

The Master: Reserve capacity.

Mr. O'Brien: Your Honor will note that Mr. Ransom here is always amending the Master's questions.

The Master: And you notice the habit I have of not standing for amendments unless it is what I want.

Mr. O'Brien: It is rather presumptious for the ex-judge to do that.

The Master: I will call him down when it is necessary.

31391 The Witness: Considering the maximum day alone, the maximum day's send-out, I should say that if the company had five per cent excess manufacturing capacity over that maximum day that it would be sufficient.

The Master: Well, give us your basis for that statement.

A. That is because of the fact that it is fairly possible to determine when the maximum day is going to come, within reasonable limits, and it should be possible then to have the machines in shape to operate and be prepared to take care of this maximum day; and you have excess daily capacity, you don't usually
31392 get three or four maximum days in succession, so you would have with a five per cent excess capacity over your maximum day, a very much larger excess capacity over your average. It would mean that you could take down plants and repair them and take care of them, but you would have to have all your plants in A1 shape, or in pretty good shape, to take care of your peak load. You would have to prepare for that each year.

Mr. Ransom: This is all over my objection and exception that this witness is in no way qualified to do any such thing.

The Master: Oh, yes.

By the Master:

Q. What about Mr. Woods' statement that an efficiently operated system ought to have a reserve equal to the break down of its largest unit? What have you to say about that?

A. By unit there, do you mean plant?

Q. Yes. As I understood Mr. Woods' testimony —I may not have it accurately—he indicated that he felt that they ought always to be ready to take the place of a plant that might blow up or burn down, for safety's sake, in a community like this, they ought 31394
always to be prepared to take up the loss that would be occasioned if the largest unit or plant was blown out of use.

Mr. Chambers: Whole plants, you mean, blown out of use?

The Master: Yes.

Mr. Chambers: The whole Astoria plant, for instance?

The Master: Yes.

A. In my opinion that would be taking care of contingencies to an extent that would not be reasonable.

Q. Why?

A. Because of the fact that I can hardly conceive 31395
that one of these entire plants would go down in its entirety. You cannot provide for every contingency. Things cannot happen one on top of another. That seems to be going too far, particularly if that applies to the maximum day. You have got to be able, in my opinion to take down an entire unit some time during the year if you want to operate efficiently, and you might want to do the repair work on that unit all at once, but on the maximum day it should be in shape to run. You cannot, in my opinion, provide

manufacturing capacity so that the largest unit can go out suddenly on your maximum day.

By Mr. Chambers:

Q. What would you say in a city where they had a single plant, they would in that case need two plants, if Mr. Woods is right. If a company was operating in a city where they had but a single plant—

The Master: That is argument.

Q. What have you to say about that?

Mr. Ransom: I object to that as immaterial.

The Master: Objection sustained.

31397 Mr. Chambers: Exception.

The Master: You can ask Mr. Hine to give any other data or reason or information or basis for his statement that this company only needs five per cent reserve, and likewise a statement by him where he finds that five per cent reserve to eliminate the necessity for having the 14th and 42nd Street plants.

Q. What other data did you use, Mr. Hine, in reference to the units necessary to this company, outside of what you have already given? You remember now you have spoken of Exhibit AA131 and these statistical tables, and your examination of the plants

31398 themselves?

A. Well, of course, in answering that last question, that cannot all be taken from tables. That is my opinion based on my experience, all that I know about this case, from my connection with the Public Service Commission, and my work on this case, and general information with respect to other companies. Now, I don't just get what your question applies to.

Q. Are you able to say, speaking of this reserve capacity that you have stated, are you able to say what plants could be eliminated or what units of

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the Consolidated Gas Company could be eliminated to keep up to that capacity?

A. I have not made the study in just that way. There would have to be other factors considered.

Q. How did you make your study with reference to the elimination of those plants?

A. I studied the operating costs as well, and that would have a bearing on the proposition in my mind, as to whether a plant was necessarily used and useful. I also bore in mind the time it would take to get a plant in operation.

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Q. You took that into consideration, the time it takes?

A. Yes, sir.

Q. Now, taking into consideration those matters, can you tell the Court what plants, what units were not needed, or which ones could be eliminated?

Mr. Ransom: I object to that as incompetent.

The Master: Judge Ransom, I have been considering the question while it was being asked. In substance it is that Mr. Chambers wants Mr. Hine to tell us how he would run this gas business. I am going to let him tell us.

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Mr. Chambers: That is the plain English, as a gas engineer.

Mr. Ransom: Do you have any theory that he is qualified? If so, I would like to cross-examine him on that.

The Master: No, I am going to let him answer.

Mr. Chambers: From 1906 to date, as a gas engineer, how he would run it?

The Master: Not from 1906 to date.

Mr. Chambers: Knowing what customers they had to supply—

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The Master: No, he don't know conditions back to 1906, and I won't let him state it.

Mr. Chambers: Why—

The Master: I won't take it.

Mr. Chambers: It is all data from their books.

The Master: No, I won't base it on any such data. I am going to let this witness take the year 1918.

Mr. Ransom: What about 1919?

The Master: I am going to let him take 1918.

Mr. Ransom: Why go so far back?

The Master: Because I like 1918. I am go-

31403 ing to let this witness state as a result of his knowledge of the plant, what he has seen, what he knows, and everything he has examined, which he will have to state as the basis for his judgment. I am going to let him state how he would run this gas plant.

Mr. Ransom: I object to that on the ground that the qualifications of this witness to give any such testimony as the basis of confiscating other people's property does not appear in the record, and is contrary to the fact.

The Master: I will allow it.

Mr. Ransom: And that this witness has had

31404 no experience, no knowledge and no qualifications. Nothing has been shown with his respect to the knowledge of 1918 conditions and this case speaks of 1919 as well as of 1918.

The Master: I am going to take his testimony as to 1918, for the time being.

Mr. Ransom: I ask your Honor to permit me to cross-examine this witness on the question of his qualifications, for the purpose of showing him to be utterly unqualified to give any such expression in a form that is going into a record that will some day go to some court for review.

The Master: Objection overruled.

Mr. Ransom: Exception.

The Master: Go on and tell us in your opinion how you would run this plant in 1918, more efficiently than these men have run it.

The Witness: That is a very broad question.

The Master: I want it just as broad as I have made it.

The Witness: I can't answer a broad question like that, just how I would run this consolidated system, not the Consolidated Company, I cannot answer that question without preparation, 31406
not a specific thing like that.

Q. You can tell—

Mr. Ransom: Let the witness finish all that he calls his answer to the Master's question.

The Master: Have you finished the answer, Mr. Hine?

The Witness: No, I said I could not answer.

The Master: All right, that is your answer to my question. Next question.

Q. Can you say what plants or units you could eliminate?

Mr. Ransom: I object to that as incompetent.

The Master: I shall have to sustain the ob- 31407
jection. The witness has already said he cannot tell me how he would run these plants.

Mr. Chambers: He has not said he cannot answer this question.

The Master: Well, that is a part of what I asked him. I don't see how he can answer this if he don't know how to run these plants.

Mr. Chambers: He said he could not answer your question without some preparation and study.

The Master: Let him study it up then. I am not going to let him say what plants he could eliminate unless he knows how to run this entire system.

Q. What plants, in your opinion, are unnecessary and not needed?

Mr. Ransom: I object to that as incompetent.

The Master: In view of the witness's statement I won't allow it. Objection sustained. How can he tell me what plants are not needed if he don't know how to run this concern, or how he

31409 would run it?

Q. Are you prepared to answer the last question asked by me, Mr. Hine?

Mr. Ransom: I object to that as immaterial.

Q. What plants in your opinion you would not need, and what plants you would need in the Consolidated Gas Company's gas making operations?

Mr. Ransom: I object to that.

The Master: Objection sustained on the ground that this witness has stated to me that he is unable to state how he would run these plants in 1918, and what plants he would have operated.

31410 Mr. Chambers: No; he said he was unable to state how he would run the whole system.

The Master: Isn't that part of it, as to what plants he would operate?

The Witness: I might say, as I understood—

Mr. Ransom: I object to the witness volunteering.

The Master: No, let him state.

The Witness: I would like to say that it involved the entire business in every way, the entire Consolidated system—

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Mr. O'Brien: That is the Master's question?

The Witness: Yes.

The Master: Are you prepared to say how you would attend to the operating end of it for the purpose of producing gas at the lowest cost?

Mr. O'Brien: I submit that that is a tremendously broad question.

The Master: That is the inquiry of the witness. You are bringing a witness here to give it as his opinion that the 14th and 42nd Street plants were not necessary in the operation of this business. In order to reach that opinion he has got to say how he would have run this plant and 31412
operated it in 1918. He can't tell in any other way.

Mr. Chambers: He will tell you if you will let him.

Mr. O'Brien: He will tell you on cross-examination.

The Master: I think he should tell me on direct.

Mr. Chambers: I think he should be allowed to say whether he can state what units were necessary and what units were unnecessary taking into consideration these matters he has stated.

The Master: Yes, I will let him say whether 31413
he is able to say. Are you able to say, Mr. Hine?

The Witness: Yes, I am able to state my opinion.

Mr. Chambers: I ask that he state it, and give his reasons to the Court.

Mr. Ransom: I object to it as immaterial and incompetent.

The Master: You are asking him to state now what plants he would have used in 1918 to manufacture the gas necessary to be delivered in the City of New York. Is that the idea?

Mr. Chambers: I have asked him during the period that he is able to cover.

The Master: No, I will limit it for the time being to 1918.

Mr. Chambers: All right, 1918.

The Master: Isn't that in substance your inquiry when you ask him what plants he would not need, what plants he would use in order to get the quantity of gas required, isn't that so?

Mr. Chambers: Substantially so.

By the Master:

31415 Q. Do you understand that, Mr. Hine?

A. I do.

Q. Can you answer that?

A. I think I can.

Q. Go ahead.

Mr. Ransom: I object to the question. The witness is not qualified to do any such thing.

The Master: Objection overruled.

Mr. Ransom: Exception.

The Master: I am going to let this witness tell us that.

Mr. Ransom: It is preposterous to let this man throw out vital parts of a great industry that

31416 he has not had the experience or the capacity to run.

The Master: You can show that on cross-examination.

Mr. Ransom: Exception.

A. In my opinion the 42nd Street plant and the 14th Street plant, as far as manufacturing capacity is concerned, would not have been necessary, and were not reasonably necessary in the year 1918.

Q. And now for how many years prior to that?

Mr. Ransom: I object to that. He is not qualified to pass on matters prior—

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The Master: I say for how many years prior to that can he say?

The Witness: From personal knowledge?

The Master: Yes.

The Witness: Well, I would say for at least three or four years before that. Of course it all involves a study of statistics as well as seeing the plant.

The Master: That is as far as I am going to take it.

Mr. Chambers: Let me ask him how far back of that, from a study of the books, of the company, or tables prepared from the books of the 31418
company and these other matters taken into consideration.

The Master: Before we go any further I am going to have this witness explain how he reaches that conclusion for 1918 and three or four years prior to that. Let us have it.

The Witness: Well, in view of the use that was made of the 14th Street and 42nd Street plant during 1918, and during the year 1917, and during the year 1916, at least, as shown by table 151, which is Exhibit AA133—

Mr. Ransom: I object to the witness's answer and I move to strike it out. It calls for a con- 31419
clusion.

The Master: This opinion evidence is always a conclusion.

Mr. Ransom: The mere fact that a number of cubic feet of gas may have been made in a particular year is not a test of use.

The Master: That may be, but I will let this witness explain.

Mr. Ransom: Exception.

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The Witness: Also from a study of the manufacturing capacity of the various plants of the Consolidated system, as shown in Table 150—

Mr. Chambers: That is Exhibit AA132.

The Witness: And from a study of the maximum make of the various plants as shown by Table 153, which is Exhibit AA138 in evidence.

Mr. Ransom: If we had copies of any of these exhibits it would be very much more helpful.

Mr. Chambers: You have copies of all of them now. They have been handed to Mr. Goetz. Have you copies of them, Mr. Goetz?

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The Master: Anything else?

The Witness: And from a general study of the situation as shown by the other statistics—

The Master: I want something better than that. You say that you reached that conclusion from some statistics. I want to know how you reached the conclusion.

Mr. Chambers: He is not through yet.

The Witness: And from a study also of the costs of manufacturing gas at these two stations, shown by Exhibit AA131, as compared with the cost for producing gas at other stations of the Consolidated Company; and also in view of the

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fact that it takes a considerable time to start up and put into operation a coal gas plant—it is my opinion that these plants would not have been necessary to have taken care of the demand which materialized during those years if the other plants had been used to their full capacity.

The Master: Does that complete your answer?

The Witness: Furthermore that is my opinion the reasonableness of the necessity of their use would also have to be considered, even though under the conditions that exist they might have been used just because they were there.

The Master: Does that complete your answer?

The Witness: Yes.

The Master: Now, you see you have not given me a single basis of fact. You have made a general statement that based on certain documents or tables or something else, you have reached this conclusion. I want something a little more definite than that. I want you to tell me what you base it on, that the combined system has a certain capacity, made up of certain plants for coal gas and certain plants for water gas; that is costs a certain amount to operate certain plants; that it 31424
takes time to start certain plants. Show me how you would operate these plants other than and differently than Mr. Woods has been operating them.

The Witness: I think I would have to say—I have not said anything of that kind at all. With those plants there I might use them. The question of reasonable necessity would also have to come in, but I think possibly the answer can be made more definite.

By Mr. Chambers:

Q. Will you make it more definite, Mr. Hine?

A. From table 153, in evidence as Exhibit AA138, 31425
it appears that the sum of the maximum make in thousand cubic feet for 24 hours for the various plants of the Consolidated Company, and the plants of the system companies, amounted to 153,808 M cubic feet; that these plants had a total manufacturing capacity of 161,300 M cubic feet; and that the maximum makes, although I do not know whether they occurred on the same days—

Mr. Ransom: They are not the same days.

The Witness: Well, that would make it larger. I assume that these maximum makes are not on

the same day, and therefore if you add the maximum makes of the various plants together you would have more than the maximum make on any one day. Taking these figures of combined maximum makes, irrespective of when they occur, of the 14th Street plant and the 42nd Street plant, it is 1,823 M cubic feet, from which it would appear that the company would have operated during the year 1918 without the make that was supplied by these two plants, by increasing the make of some of the other plants.

31427 By the Master:

Q. Are you familiar with the operating conditions in the other plants?

A. At specific times?

Q. Yes.

A. Not on specific dates, no.

Q. Is it not a fact that your testimony is based entirely upon the argument with reference to the figures as they appear in the records?

A. Not only that, but the possibilities of having the plants in condition, and also the costs of production of gas at these two plants is shown to be very high according to the exhibit in evidence, and the testimony,

31428 which agrees with my opinion, is that it would take a considerable time, two or three weeks at least, to start up a coal gas plant; and therefore in my opinion it is not of much use in a sudden emergency, you would have to prepare too far ahead.

By Mr. Chambers:

Q. If an accident happened by which one of these plants is blown up entirely and put out of business suddenly, why, these two coal gas plants would not be of any use for a sudden emergency, would they?

A. No.

Q. How long do you say in your opinion it would take to get them ready, two or three weeks?

A. Yes, at least.

By Mr. Ransom:

Q. That is starting cold?

A. Yes.

By Mr. Chambers:

Q. Now, were there any other factors, Mr. Hine that you took into consideration or have you given them all?

A. Well, yes, I have also taken into consideration the type of these coal gas plants. 31430

Q. What about the type of them.

A. In my opinion they are not modern or efficient in any way.

Mr. Ransom: I object to the answer and move to strike it out on the ground that the witness has not the slightest qualifications.

The Master: Motion denied.

Mr. Ransom: Exception.

Q. Take the 14th Street plant, in what particular can you state that it is inadequate and not up to date?

Mr. Ransom: I object to that. It does not appear that the witness knows anything about these plants, he is undertaking to speak as of the 31431 present time, he has not been in the plant for a long time, and apparently has been there very little at all. Next they will be putting on somebody who has driven by it in a taxicab.

Mr. O'Brien: We will get Mr. Miller, who puts his ear to it and felt its pulse, and Allison who judged it from St. Louis.

The Witness: The benches are not of a modern type, there is no labor saving machinery for the handling of coal and the handling of residuals.

It is equipped with discharging machines and charging machines I believe, but as compared with a modern plant, or even a semi-modern plant, it is away out of date, requires a great deal of labor to run it, and in my opinion it would be inefficient in its operation so far as the use of materials and the production of residuals.

Q. That is true of the 18th Street plant, is it?

Mr. Ransom: I object to that. What does he know about the 18th Street plant?

Q. Or the 42nd Street plant?

31433 Mr. Ransom: Objected to.

The Witness: I would say even more so, that that hasn't as much labor saving machinery, even more out of date.

Mr. Ransom: Exception.

Q. Have you prepared any other tables showing the cost of making gas at these two plants as compared with the making of coal gas at other plants of this company or of the Consolidated system that are not already in evidence?

A. I have summarized the comparative costs of production of coal gas as shown at the 14th Street plant and 42nd Street plant of the Consolidated Gas
31434 Company, and as shown in evidence here by an exhibit submitted by Mr. Frank.

Q. Is that this large one?

A. Yes.

Q. Exhibit AA131?

Mr. Ransom: I want to object to that answer and move to strike it out on the ground that the thing has happened exactly as I said would happen, namely, that they would take this bobtailed cost of gas which they made up, leaving out factors that amount to millions of dollars, and they

themselves when they put that in the exhibit did not put it in except in quotation marks, and now this witness goes ahead and uses it as though it was the cost of making and distributing gas at those plants.

The Master: Does that make his testimony any better?

Mr. Ransom: No, but it gets it in the record, and now it no longer appears in quotation marks when this witness testifies to it.

Q. Have you stated—

A. No—that table—I also placed on that table the 31436
costs of producing coal gas at Astoria and at the Central Union Gas Company's plant, which costs I obtained from data made up by the Public Service Commission from reports to them.

Q. Is that completed yet, is it typed?

A. Well, that table covers the Consolidated Gas Company from 1906 to 1918, but the information from the reports of the companies to the Commission could only be put in this shape for the years 1912 to 1918, because of the changes in the report forms; otherwise it is complete.

Q. Give those figures, will you?

Mr. Ransom: I object to it as incompetent. 31437

The Master: Objection sustained.

Mr. Chambers: Exception. I do not see why—

The Master: Because the witness says it includes figures made up by the Public Service Commission.

Q. Who made up those figures, Mr. Hine?

Mr. Ransom: Objected to as immaterial, since he did not.

The Master: He says he got part of his information from the figures prepared by the Public Service Commission.

The Witness: I got these figures from Dr. Webber, I do not know who made them up.

Q. He furnished those to you?

A. He did.

Q. Of course you don't know whether they are correct, except as he gave them to you?

A. I do not.

Q. But on the assumption that they are correct, can
31439 you give the figures?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Q. Now, what is that table you have reference to, is it a table?

A. Yes.

Q. What is the number of it?

A. There is no number on the table. It was a table that I got up for my information.

Q. And you have there the costs, as you have stated, of making coal gas by these two companies, Central Union and Astoria?

A. And also the two plants of the Consolidated.

31440 Mr. Ransom: I object to the question, it is a bobtailed and abbreviated cost, carefully selected, hand picked.

The Master: Objection sustained.

Q. Mr. Hine, on the 14th Street plant there is a piece of property there, is there not, that you do not eliminate during these years?

A. I am speaking of the manufacturing plant and not of this large holder at 14th Street, the holder on Avenue C between East 15th and East 16th Street.

Q. That is Parcel No. 1?

A. Yes, Parcel No. 1 on Sketch No. 4, Exhibit AA126.

Q. And Parcel No. 2, too?

A. Yes, to the extent as shown.

Q. And you thought that they needed that holder all these years?

A. Yes.

Q. Now, Parcel No. 2 jointly used, isn't it?

A. Yes.

Q. And it is to be apportioned between the Consolidated Gas Company and the other companies, in accordance with the use? 31442

The Master: The evidence shows that.

Mr. Ransom: Objected to. This witness is not qualified.

The Master: Objection sustained.

Mr. Chambers: I want to show what our claim is.

The Master: Objection sustained. I know what your claim is.

Q. How is that to be apportioned, Mr. Hine, Parcel No. 2, in your judgment?

Mr. Ransom: Objected to, incompetent.

Q. Between this Consolidated Company and the other? How would you apportion its use? 31443

Mr. Ransom: No time specified, he is not familiar with it.

The Master: What is this holder?

Mr. Chambers: The holder is on Parcel No. 1.

The Master: Where is that?

Mr. Chambers: The holder?

The Master: Yes, what street?

Mr. Chambers: Between 15th and 16th Streets.

The Master: Who uses that holder?

The Witness: The Consolidated.

The Master: Do you want to apportion it between the Consolidated?

Mr. Chambers: I want to apportion this little strip of land in here.

The Master: Apportion it how?

Mr. Chambers: Between the Consolidated Gas Company and the other companies, in accordance with their use.

The Master: What use is made of that strip?

Mr. Chambers: That is what I was trying to bring out.

31445 Mr. Ransom: This witness doesn't know. I object to the question.

Q. Do you know?

The Master: Objection overruled.

Mr. Ransom: As of what time?

The Master: I am talking now of 1918?

The Witness: Boiler and exhauster house on the East 15th Street side of that parcel.

Mr. Ransom: In connection with the holder?

The Witness: In connection with the holder.

The Master: What is your point, that they ought to apportion it? Why ought that to be apportioned?

31446 Mr. Ransom: I object to it as incompetent.

The Master: I will take it.

The Witness: There is a holder belonging to another company of the system to the east of this holder on Parcel No. 1. The holder on Parcel No. 1 has a capacity of 3,200,000 cubic feet, and the holder to the east, belonging to the other company, has a capacity of 5,000,000 cubic feet.

The Master: And this apparatus is used in connection with the two of them?

The Witness: According to the testimony.

The Master: And you say it ought to be apportioned in the proportion of 3 tons?

The Witness: 32 to 50.

Mr. Ransom: That is over my objection.

The Master: Yes.

Q. And do you know how long that use goes back?

The Master: In that way.

Mr. Ransom: Objected to, the witness doesn't know anything about it.

The Master: He will state from the testimony

The Witness: From the testimony, yes.

Mr. Ransom: I object to it, then, your Honor; 31448
you can draw inferences from the testimony.

The Master: Yes; I will sustain the objection.

Q. Well, the testimony does show how long that was there?

A. Yes, it does.

The Master: The testimony given by Mr. Hine simply accentuates what I have said before.

Q. And it is your opinion is it that that use of Parcel No. 2 should be apportioned on the basis you have just given during the time as shown by the testimony when it was jointly used, whatever that time is?

Mr. Ransom: Objected to as incompetent, and 31449
time wasting.

The Master: Objection sustained.

Mr. Chambers: Now it is limited to 1918.

The Master: I will sustain the objection. I do not want it. Your contention is that this apparatus is used jointly by this company and another company, and you say I have got to apportion it.

Mr. Chambers: Yes.

The Master: All right.

31450 Willard F. Hine, Direct.

Mr. Chambers: I want to see if he apportioned it in the same ratio back to the time the testimony shows it was jointly used.

The Master: I won't take it.

Q. Do you know how many years the holder has been on Parcel No. 1 from the records of the company?

Mr. Ransom: Objected to, incompetent.

The Master: What is the purpose of that?

Mr. Chambers: To show that that goes back for that piece of property from 1906 down to the
31451 time when they declared the statute was unconstitutional.

The Master: Objection sustained.

Q. Now, one of the plants that you have talked about is the land that relates to that plant as found on page 6, is it, of this Exhibit 178, in pink?

A. It is.

Q. Now, take Lot 1, Block 3236, Sheet 19 of our exhibit, or Sheet 18, of Exhibit 178. Have you examined that property?

A. I have.

Q. And you know the layout there of the holder and the other buildings?

31452 A. I do.

Q. Now, are you able to say what part of that land shown in pink on Exhibit 178 was needed by the Consolidated Gas Company in making gas?

Mr. Ransom: Objected to, incompetent.

The Master: Objection sustained.

Mr. Chambers: Will the Master state why?

The Master: Because I know myself what they are using and what they need up there.

Mr. Chambers: You mean on the ground that it is improved—

The Master (interrupting): On the ground the evidence indicates the situation there. They bought a large tract of land, the testimony is that they could not buy half of it or a portion of it, or any other portion of it, and they are actually using part of it.

Mr. Ransom: And part of it is actually occupied with structures.

The Master: Yes, which means part of it is actually being used, and the balance of it is being used for tennis courts.

Mr. Ransom: Yes, part of it, and the rest of it 31454
is a rocky ledge.

Mr. O'Brien: Well, the holder is there.

The Master: I do not want Mr. Hine to decide—

Mr. O'Brien: He is in a better position to decide that than your Honor, from the fragmentary testimony of Woods, *et al.*

The Master: The question now is just what part of that plot they are using, and what part is necessary.

Mr. O'Brien: Yes, and the fact they have gas in it and presumably are selling the gas that is in it, is not the only factor in this situation. 31455

The Master: Objection sustained.

Q. You know just how much of that lot is occupied by the holder and the pumping station, is it?

The Master: Yes, so do I.

Q. Taking into consideration the capacity of the holder which is located on the lot, the pumping station and other buildings in connection therewith, can you say or are you able to say whether that portion of the lot is or is not needed for the production and sale of gas of the Consolidated Gas Company?

31456 Willard F. Hine, Direct.

Mr. Ransom: Objected to as incompetent.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. You have placed a line on this Exhibit 19, on the map; you have placed across its face a line running from the Harlem River to the West Fordham Road, on Sedgwick Avenue, 450 feet from West Fordham Road, making a line between the Harlem River Terrace and West Fordham Road. Why did you do that?

Mr. Ransom: Objected to as immaterial.

31457 The Master: Objection sustained.

Mr. Chambers: Exception.

Q. What does that part to the east of that and the west of that line represent—to the north of it?

Mr. Ransom: I object.

The Master: Objection sustained. I know what it represents.

Mr. Chambers: You will not let us say whether it is needed or useful?

The Master: You have said it a dozen times in a dozen different ways. You have brought out on the record that all the improvements, gas working improvements, are south of that line,

31458 and that the part north of it is waste land and is not needed or useful according to your theory of gas plants.

Mr. Chambers: You have allowed them to place a line there.

Mr. Ransom: That was done on cross-examination, and marked on Mr. Chambers' copy of Exhibit 178.

Mr. Chambers: Your Honor has not heard why this line, 450 feet, was there.

The Master: Yes, I did.

Mr. Chambers: Wouldn't you care to know? Whom did you hear it from?

The Master: Half a dozen witnesses.

Mr. Chambers: There was not any such line in the evidence.

Mr. Ransom: They moved the line over thirty feet.

Mr. Chambers: We changed the line.

The Master: You offer this series of maps in evidence as showing the property you claim is useful?

Mr. Chambers: Yes. 31460

The Master: Didn't you put the line on here as indicating the property north of that which was not useful?

Mr. Chambers: Yes.

The Master: Then don't I know it?

Mr. Chambers: I think there ought to be some additional proof here as to why it was done—why we put the line at that particular place instead of some other.

The Master: Objection sustained.

Mr. Chambers: Exception.

The Master: I shall assume you put it there because you thought it was the north limit of the 31461 property used.

Mr. Chambers: That is it exactly but there won't be any evidence of it.

The Master: Yes, there is.

Mr. Chambers: That is what I would like to have in evidence, the same thing that you have just said; but when we get all through there will be no testimony about it.

By the Master:

Q. You put the line there because that you felt was the northern limit of the property actually occupied for gas use; is that it?

A. I would not state it just that way.

Q. How would you state it?

Mr. Ransom: Objected to as incompetent.

The Master: I am going to take it.

A. It leaves sufficient room north of the holder for the storage of materials there.

By Mr. Chambers:

Q. And the other was not necessary for storage or for use in connection with that holder?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

31463 Mr. Chambers: Exception. Your Honor is drawing that clause pretty fine there.

The Master: Yes, and I am going to draw it finer on this opinion evidence. It is not of any use to me; it is all argumentative.

Mr. Chambers: You are not a gas engineer, you see.

The Master: I will be pretty near one when I get through with this case.

Mr. Chambers: For one thing you are not a gas engineer, and what you have in mind, and all that, is not in the evidence, in the testimony.

The Master: What I want in the evidence of

31464 the defendants, and I do not seem to be able to get it—

Mr. Chambers: You have allowed Mr. Woods and others to go on and show the use of it.

The Master: Yes, and very much of it, on cross-examination.

Mr. Chambers: Then why should we not be permitted to do so?

The Master: Because you cannot take issue with something brought out on cross.

Mr. Chambers: I cannot?

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The Master: No, not while I am conducting this case.

Mr. Chambers: To that rule I have to take an exception. I thought we might bring out anything that was helpful on cross-examination.

The Master: I am going to let you bring out on cross-examination, or by any other method, anything that is going to help me make an intelligent report as to whether this company's property is being confiscated, and the rules I am invoking simply help me to reach that result without taking a lot of useless matter. I may be wrong about it, but that is my judgment.

31466

Mr. O'Brien: Under that theory, your Honor, you might bring a few men here and in one afternoon settle this case.

The Master: Why, certainly.

Mr. O'Brien: Ask Mr. Jones, "What do you say it costs to make gas?" And Mr. Smith, "What do you say it costs to make gas?"—and, Bing! it is finished.

The Master: I say there has been a disposition on the part of the governmental officials—I am not talking of counsel but of governmental officials with possible authority and jurisdiction—to send three or four disinterested people who know the gas business; they could send them to these gas plants, and in half a day they would determine whether they are getting a fair price. That is what ought to be done here; there ought to be no such procedure as a seven months' trial.

31467

Mr. O'Brien: That is in the face of the Interstate Commerce decisions, the Public Service decisions and the rate cases.

The Master: I believe that if Mr. Nixon were permitted to go into this situation, go over and look at it, find out how they are running their

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plants, how much coal they need and how much oil they need, in twenty-four hours he could make a decision that would be fair to this company.

Mr. Chambers: But he has appeared here in this case.

The Master: That is a legal form—the red tape. He has to come in and have counsel represent him in this case in accordance with the forms and rules of law and evidence. And probably it would not have gone as far as other counsel. Col. Hayward says he has had his views

31469 of the trial; Mr. O'Brien has had his views of the trial and Mr. Chambers has had his views. What one set of defendants might have done is beside the question. When Mr. O'Brien makes a suggestion of the kind he did, my answer to it is yes, Mr. Lewis Nixon could come into this company with a force of engineers and say in twenty-four hours what this company ought to have.

Mr. O'Brien: What are you going to say about the old case? Are you going to wipe out Masten, Lacombe, and the United States Supreme Court?

The Master: Yes.

Mr. O'Brien: And say it was all a futility and

31470 all in vain?

The Master: Why, of course it was.

Mr. O'Brien: Why, there the Supreme Court found differently on all these matters and said it was all error.

Mr. Chambers: The only question is whether they have enjoyed a fair rate.

The Master: Is it confiscatory just now?

Mr. Chambers: This minute?

The Master: This year, last year.

Mr. Chambers: No, averaged up.

The Master: Go on and put in your proof.

Mr. Chambers: That is what I am trying to get at.

Q. Was there anything on the northerly end of the lot—

The Master: Let me ask you this: Do I understand your position to be, Mr. Chambers, that when the State of New York comes along and says, "You can charge 80 cents and that is all you can charge, that is your maximum"—

Mr. Chambers: "You must not charge more than that; you can charge less if you want to."

The Master: Yes, that "you must not charge 31472
more than 80 cents."

Mr. Chambers: Yes.

The Master: And thus gives its statutory fiat as to what in its judgment is a fair price, and this company proceeds from 1906 to 1917 to charge that fair price—that because they made some money on the price fixed they have got to lose money since then?

Mr. Chambers: You do not state it correctly. I am willing to state my theory any time if the Court wants me to, and I think I am right, in these cases—and this is for the old guard over here. 31473

Mr. Ransom: This is to take up time.

Mr. Chambers: It is this: In 1906 there went into operation this rate, and the United States Supreme Court pronounced it all right, pronounced the statute constitutional and said the Legislature had the power to make it.

The Master: They said they would not upset it because the evidence was not clear enough to justify it.

Mr. Chambers: It was upheld; the law was held to be within the power of the Legislature to make.

31474

The Master: Yes, and I shall hold so now, too.

Mr. Chambers: That goes into operation and the company enjoys the benefit of that, and that continues right along without any complaint from the company until 1919.

Mr. Ransom: Oh, no.

Mr. Chambers: Then they say in their complaint that they have not enjoyed a fair return during all these years.

The Master: I would not have drawn the complaint that way.

Mr. Chambers: All right, that is in the com-
31475 plaint. Now they have selected the period; they have said during all these years they have not enjoyed a fair return. The only way the Court can decide this case rightly in my judgment is to start with 1906 and ascertain what property they had, used and useful, upon which a return was to be figured, and figure the return for 1906, 1907, 1908, 1909 and 1910 right down, and then when we get to the present time average that up and see whether their complaint is correct, that they have not had a fair return. They have named the period in which they have not enjoyed it.

The Master: Have you your complaint there?

31476 Mr. Chambers: Let us have the complaint.

Mr. Ransom: In the property sections of the complaint, on a question that was before the Public Service Commission, for example, this company would endeavor of course, to prove going value, the relation to an accumulated deficit. This company made an allegation in its bill of complaint that it has not earned a rate of return upon its invested property during the years this statute has been in force. The complaint did not allege that as a basis upon which the present confiscatory character of the statute was made to

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depend; that was in relation to the question of our right to what may be called going value. And in this case, for the purposes of this case and without prejudice to our rights elsewhere, we have not undertaken to prove going value.

Mr. O'Brien: Well, you have made your bed, anyway, Judge Ransom; you have made your bed.

The Master: Have you undertaken to prove, or do you believe that you have successfully proved, that you did not get a fair return from 1906 to 1917?

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Mr. Ransom: We have not undertaken to prove that.

Mr. O'Brien: He has offered proof.

Mr. Ransom: The defendants called upon us to present proof of the operating situation in these years and I said I did not regard it as material.

The Master: Perhaps we can confine this issue by a clear understanding of what your claim is. Whatever the complainant says, will you ask me in this case to find as a fact that from January 1, 1906, to December 31, 1916, you did not get a fair return?

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Mr. Ransom: I shall not ask you to find that in this case, because we have not offered proof on that point; but we would if that were in issue.

Mr. O'Brien: Well, you have made work for the defendants and I called it to the Court's attention when the Master was appointed, on May 16th. I put that right up to Judge Mayer. This camouflage about going value is all bunk; no courts ever allowed that kind of thing as going value. They stopped it. They made the allegation that this statute was defective and confiscatory from 1906 on. That is the complaint and

31480 they cannot amend that now, and we are going to meet it. You have made your bed, Ransom, and you are going to sleep in it.

Mr. Hayward: He is telling you what he would plead if he was going to draw it over again.

Mr. Ransom: Not at all.

Mr. Hayward: He told you what he would plead today.

Mr. Ransom: I did not.

The Master: This is what I have tried to indicate—

31481 Mr. Hayward: I know all you have indicated right along here, your Honor.

The Master: What I have been trying to do is to bring out clearly the attitude of Mr. Ransom, in the light of what I have said, to see if I cannot save the defendants some time and trouble in this case.

Mr. O'Brien: It is too late, your Honor.

The Master: Judge Ransom says he is not going to ask me for a finding that the rate was confiscatory from 1906 to December 31st, 1916. That is out of this case and I will not make the finding: I will not be asked to make the finding.

31482 Mr. O'Brien: We will ask you to make the finding in respect to that.

Mr. Ransom: I was confronted with a situation. In order to fully prove going value it would have taken a considerable length of time. We alleged going value in our complaint and in any situation as to what this company ought to charge the question of going value would arise.

Mr. O'Brien: Did you put it in, then, to set our investigators off on a wild goose chase, to take the time? You put it in your complaint and in your proof. This is all post mortem now and

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we are meeting that case, and that is the case that is going up to the higher courts. There is no theory of going value; it was all bunk, your Honor. They slipped that allegation in there and they put their proof in on top of it.

The Master: Let us forget going value. This case turns on the proposition, in substance, that beginning in 1917, or perhaps earlier, the rising cost of material and labor got to a point where it not alone did not show a fair return on the capital invested during the years 1918 and 1919, and does not today, but it requires this company to sell its gas to the consumers at an absolute 31484
loss. If the evidence introduced by the complainant is not successfully met by the defendants, I shall find as a fact, referring to the specific figures in support of the fact, that since the first of January, 1918, and perhaps prior to that time, it has cost them more to make and distribute gas than the statute allows them to charge for it, and that that is confiscatory of their property.

Mr. Chambers: Of course there is not any proof as to that. But you believe Judge Cardozo, don't you?

The Master: Yes.

Mr. Hayward: This is what Judge Ransom 31485
did and this is what you are going to do: Judge Ransom comes in here with a complaint, and we are required to meet the statement that over a period of years this law has been confiscatory, that they have not had a statutory rate during that period of years starting in 1906. We go on that theory and we contend over this period of years this statute has been fair to this company, that they have had adequate compensation, that you can no more take one year or one month than you can take the particular day when it cost

31486

them $36 to make a thousand cubic feet of gas in this obsolete plant at 14th Street.

We took that up—the period of years that they themselves announced they wanted discussed and considered by you in this case. Now it comes down to this point, where you found they had fallen down badly on their case as they first put it; so you say: "What I will do, I will correct this whole thing for them; I will not decide this on the issue that they created when they filed their complaint, I will throw out these fat years, I will throw them out of this case entirely; I will not
31487 consider the fat years, I will get down to a couple of lean years that were occasioned by a crisis in the world's history that never has happened before and probably never will happen again, and that if we do not recover from the whole universe will fall under it." You say, "I will eliminate these fat years, and I will hold the complainant to show that every minute from 1906 down to December 31, 1916, every day and every week of that time"—that is what you say—"these people must have had a return." Now, they fixed this period of time, they chose the arena, and I say I do not think it is a fair way to the public
31488 or the public officials brought into this, to consider that question.

The Master: That is another matter.

Mr. Hayward: No, it is not. Let me finish and I will be through in thirty seconds. I say for the purpose of this argument I will concede there have been periods here in this emergency when the Consolidated Gas Company did not make any money; I will concede there are periods when Hayward did not make any money, when Gilbert did not make any money, when everybody went to war. They want you to de-

31489

cide this case—how absurd it would be—covering a period of years from 1906 to 1919, thirteen years, on what happened when we declared war on Germany.

This is positively the last; just let me make one more suggestion and I will not say another thing.

You are trying to decide here the general condition of health of this patient and what it has been over thirteen years since this law was upheld by the Supreme Court of the United States; has it been a healthy company or a sick company. Concede for the purposes of argument that they 31490
got a bellyache in 1919, you cannot wipe out the former years of perfectly healthy normal condition. Suppose we can show to your Honor that this is a temporary thing, that this is a bellyache they got—some of us got it worse than they did—you cannot decide the general question of this patient's health over a period of thirteen years because they had the colic.

The Master: What I am trying to do here is to limit the issue.

Mr. O'Brien: It is too late, your Honor.

Mr. Hayward: Limit the issue to the years 31491
that are exceptional, concededly so, that come from the arising of a great emergency that no man could have foreseen, and eliminate everything, in other words, that would be favorable to the defendants.

The Master: No, but listen to me a minute. If I am wrong and Judge Ransom is wrong about that view, then this decision, if it is in favor of the Gas Company, will be reversed. What I am trying to make clear is that in the light of Judge Ransom's statement he is not go-

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ing to ask me for a finding to the 1st of January, 1918, or the 1st of January, 1917, or whatever it is—because I think there is proof in the record that they lost some money in 1917, I think the proof was $100,000.

Mr. Ransom: You mean loss below their bare operating expenses.

Mr. O'Brien: What do you mean, your Honor, that there is proof in the record of the loss in 1917?

The Master: Wait a minute. What I want to make clear is this: If Judge Ransom does not
31493 ask me for any finding prior to a certain date, then there is not any finding. I give it as my opinion that there is not any evidence on which a finding should be based; I am resting my conclusion entirely on the results of this bellyache. I followed Judge Cardozo's decision in this gas case; I find as a fact that beginning January 1, 1918, it cost them more to make gas than previously, and that has continued in 1919, and that as a matter of law I believe they are entitled to have the operation of this statute suspended until conditions get back or until they shall not be suffering a loss—your rights are fully protected,
31494 you have your opportunity to reverse it on that basis.

Mr. Ransom: The defendants here have endeavored to create the impression there has been some change of position on the part of the complainant. There has not. We showed in our bill of complaint the 1918 operating expenses.

Mr. O'Brien: Why did you put in those tabulations?

The Master: Do not interrupt.

Mr. O'Brien: No, but why did they put in those tabulations covering those years?

31495

Mr. Ransom: Let me finish my statement. We put in our bill of complaint a statement of operating expenses and revenues for a year, a nominal year ending October 31, 1918. We put in evidence in this case in the first instance the revenues and expenses for 1918 and then for certain months of 1919. We put in evidence the books which show the operating expenses and the revenues and the financial transactions of this company running back to 1906. It was not my original intention to put in a tabulation covering those years. Subsequently they were asked for and they were made up.

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Now, the position of the complainant is this: We are entitled to a judgment in this case on the basis of present conditions, on the basis of 1918 conditions, on the basis of 1917 conditions: or on the basis of conditions as they have existed going back as far as your Honor thinks should be gone. We have proved here the operating expenses, the revenues, the financial situation of this company year by year with the books. We think that 1918 and 1917 and 1919, and the conditions in 1920, are all that are material, all that are necessary, and should be the basis of a judgment in this complainant's favor. If your Honor feels that 1916, 1915 or 1914, or years back of that, should be taken into account, that proof is before you. If you think that findings should be made on that, and the defendants request it, it will be for you to determine whether findings should be made.

31497

We are not going to ask you to find the amount of property in 1906 or 1907 or these other years: we are not going to ask you to make a finding with respect to those prior years, as we shall request you to make with respect to the years

31498 which were made the basis of our claim as to our receipts and disbursements in 1918 and 1919, and our proof which has been offered with respect to conditions for the future. If your Honor feels that, instead of taking 1917 and 1918 and 1919, you should include 1916 or 1915, that is there. As a matter of fact, as I have indicated a number of times through this trial, the only reason why we put in tabulations covering all of those early years was this: In the first place they were called for, and in the second place, the Supreme Court had indicated by a reference to
31499 the experience of the company under the statute, and so we put it in.

The Master: Now, I will hear Mr. Chambers a minute.

Mr. Chambers: You have expressed faith from time to time in what Judge Cardozo said when he wrote the opinion in the Municipal Gas case in the Court of Appeals.

The Master: Yes.

Mr. Chambers: I am going to base my statement right on what Judge Cardozo said then and there.

Mr. O'Brien: The Appellate Division said
31500 something about this case, too.

Mr. Chambers: Well, they have strengthened our position. Judge Cardozo said that what happened in prior years—and he did not place any limitation upon it whatever—he said that was evidence and must be taken in the case and must be considered. And that is what we are now asking you to do. There is not any use of taking this testimony of prior years unless it is of some value.

Judge Cardozo had in mind, in my judgment, that you can go back a number of years and show what return the company had enjoyed under this statute, and then in this Court of Equity weigh it all, and if they have enjoyed an average return that is more than six per cent, or more than fair, why then the Court of Equity should not make the public pay more than a fair average rate of return. The company is here all the while and they have enjoyed all these years.

The Master: I do not know who started this discussion, but I will end it. 31502

Mr. Chambers: What I want to be permitted to do is to put in evidence on behalf of the defendants covering these prior years.

Mr. Ransom: You have it in.

Mr. Chambers: No, we have not.

Recess.

Afternoon session.

WILLARD F. HINE resumed.

DIRECT-EXAMINATION BY MR. CHAMBERS: 31503

Q. In addition to the other questions I asked you this morning, Mr. Hine, you recall do you that you read the testimony of Mr. Alrich and Mr. Woods, wherein they stated the use to which these various pieces of property set forth in Exhibit 178 were put from 1906 down to the present time?

A. Yes, sir.

The Master: He said in use in 1918.

Mr. Chambers: No, I covered all the years.

The Master: That was on cross-examination.

Mr Chambers: Well, during the case.

Mr. Ransom: Exhibit 178 spoke as of two times, one the 31st day of December, 1918, and the other about the 1st of August.

Mr. Chambers: That is all in.

Q. You read that, the use to which Ulrich said the pieces of property were put during those years?

A. He also spoke of additional property.

The Master: Wait a minute. Mr. Hine has read his testimony. Next question.

Q. And he spoke of some additional pieces of prop-

31505 erty?

A. Yes.

Q. You recall that, when he was recalled?

A. Yes, sir.

Q. Additional pieces of property?

A. Yes, sir.

Q. And the uses to which he said those were put?

A. Yes, sir.

The Master: I suppose this may bear upon some of those adjustments made by Mr. Teele in his operating revenue for prior years, tax items, and things of that sort?

Mr. Chambers: It will.

31506 The Master: Go ahead.

Q. You have a copy of Exhibit 178?

The Master: He has the original.

Mr. Chambers: I would rather he would use our copy that is marked.

Q. Now, page 1 there, you made no change in that at all as shown on Exhibit 178?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Take page 3 of Exhibit 178. You recall that is the 14th Street plant that we have been speaking of?

A. It is.

Q. And you recall the testimony of Mr. Alrich fully about the different years from 1906 down as to the use of that property?

A. Yes.

Q. When you testified that in your opinion that plant was not needed, and the reasons why, there remained one lot, 989, with a holder, which in your opinion should be retained?

A. Yes, sir.

Q. That is Block 989, Lot 1?

A. It is, with the reservation as to a certain parcel of the easterly part of Lot 1, as testified to, parcel No. 2, page 4 of Exhibit AA-126. 31508

Q. And you have made a study of that testimony back to 1906, relating to that plant, have you?

Mr. Ransom: I object to that as immaterial.

The Master: I will allow it.

Mr. Ransom: Exception.

A. Yes, sir.

Q. And what you said heretofore about the use of that property, is that your opinion about it back as far as 1906, covered by the testimony of Mr. Alrich?

Mr. Ransom: I object to that as incompetent. The witness has no knowledge and no means of knowing. He didn't know what was used on that property. 31509

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. You are familiar with the use of that property back to 1906, aren't you, Mr. Hine?

Mr. Ransom: I object to that. He was in the University of Wisconsin during part of that period.

The Master: Objection sustained.

Mr. Chambers: The use, I say.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. How far back, what years are you able to say whether that property was needed or not, in the light of all you have testified, and the testimony of Mr. Alrich, and your experience as a gas engineer?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Is the piece of property you have spoken of, Parcel No. 1, Block 989, and then Parcel No. 2, is
31511 that the only part of that land covered by that page 3 of Exhibit 178 which you have considered as being needed in the making of gas?

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained.

Mr. Chambers: As fully covered?

Mr. Ransom: It is incompetent.

Mr. Chambers: I am going to ask if counsel objects to this testimony—

The Master: I am not going to take Mr. Hine's testimony on any of this line.

31512 Mr. Chambers: On what grounds?

The Master: I do not think he is qualified, and I do not think it calls for expert testimony.

Mr. Chambers: As to what is needed, or used and useful?

The Master: Yes.

Q. Are you able to say what part in your opinion of the land shown in pink on Exhibit 178 is necessary, or necessarily used and useful in the making and distribution of gas by the Consolidated Gas Company, taking into consideration all the factors which you stated this morning?

Mr. Ransom: I object to that on the same grounds as before.

The Master: Objection sustained. It may be stated on the record now that I discard from consideration all of the testimony of Mr. Hine except the one statement that in his opinion, for what it may be worth, an excess of capacity of only five per cent is necessary in the operation of this gas business.

Mr. Chambers: I object to that upon the ground that there has been no motion to strike it out. 31514

The Master: I am not striking it out, I am making the statement that I will not consider it.

Mr. Ransom: I intended to make a motion to strike it out in a very short time.

Mr. Chambers: What has happened since recess to change the Master's view?

The Master: Further consideration.

Mr. Chambers: You have considered it further during recess?

The Master: Not during recess, I have considered it further since I have been listening to you here.

Mr. Chambers: You have not listened to me, because I have not made any statement yet. 31515

The Master: No, but the questions you have asked lead me to the conclusion that it is perfectly useless testimony.

Mr. Chambers: Exception to all those rulings.

Q. Now, take the next sheet, No. 4, Block 985, Lot 7, did you include any of that in pink on this Exhibit AA-126?

Mr. Ransom: I object to that as immaterial.

The Master: Objection sustained.

Mr. Chambers: Your Honor is not going to allow us to prove what is used and useful here in the gas making business? If so, we might as well shut up shop. You say that we cannot by any opinion testimony, or opinion of an expert, show what is used and useful in the gas making business, and what is needed in the light of the testimony of the complainant company?

The Master: I have made my ruling.

Mr. Chambers: Will your Honor state the grounds.

31517 The Master: No, I won't discuss it any further.

Mr. Chambers: Will you allow me to put upon the record sufficient of this testimony, and the line I want to show, or the testimony I want to show, sufficient to indicate what the testimony relates to?

The Master: Yes.

Mr. Chambers: You will not even allow him to say he is able to say.

The Master: I won't allow a man to say he is able to say. I will decide whether he is able to say. I will let you put on any witness that you can find who can testify that at particular times

31518 this land was used for purposes other than making gas. I will likewise let you call a competent witness to show any necessary, material or relevant facts.

Mr. Chambers: That is what I am doing now.

The Master: I don't agree with you. Ask your questions and make your record.

Mr. Chambers: I take an exception.

Q. Will you please state why in your opinion, Mr. Hine, the property shown in Block 985, Lot 7, Sheet No. 4 of Exhibit 178, and Lots 19 and 20, were not needed by the complainant company in the manufacture and distribution of gas during 1918?

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. Chambers: Exception.

The Master: I don't think Mr. Hine is qualified.

Mr. Chambers: In what way?

The Master: I don't think he has had the practical experience in operating a gas plant to be able to answer those questions. I don't think his experience and education justify him in assuming that power.

Mr. Chambers: All right, we will see. 31520

The Master: He has drawn inferences from data, and I can draw the inferences, I think, just as well as he can.

Mr. Chambers: You dispute, do you, that he is a gas engineer?

The Master: He didn't say he was a gas engineer.

Q. Mr. Hine, are you a gas engineer?

Mr. Ransom: I object to that as incompetent. He is not able to testify whether he is a gas engineer or not. That is a question of what his experience has been.

The Master: I will let him answer whether he is a gas engineer, just as I would let you say you are a lawyer. That is the only way to ask him, "Are you a lawyer; are you a doctor; are you a gas engineer?" I understood Mr. Hine to say that he was an electrical engineer, and graduated as such. 31521

Mr. Ransom: A man becomes a member of the bar or a doctor by a certain way.

The Master: I don't know whether you don't become a gas engineer in a certain way. I will let Mr. Hine say whether he is a gas engineer.

A. I consider so, yes.

Q. What makes a man a gas engineer, Mr. Hine?

Mr. Ransom: I object to that as incompetent.

The Master: What does he understand makes a man a gas engineer.

A. Experience and education.

The Master: Well, as I understand it, Mr. Hine, your only experience with reference to gas matters is the experience that you testified you have had in the Laclede Gas Works, and your connection with the Public Service Commission—

31523 isn't that so?

The Witness: Yes, sir.

The Master: That is all?

The Witness: Yes.

The Master: Have you ever had charge of the actual operation of a plant to produce gas?

The Witness: Yes.

The Master: And handled the men?

The Witness: Yes.

The Master: Where?

The Witness: As I have stated.

The Master: Where?

The Witness: Laclede Gas Light Company's

31524 station.

The Master: To what extent?

The Witness: When I was in charge of the coal gas operation they had two houses there with a capacity of about 3,000,000 cubic feet a day. I was in charge of the men operating these plants. I was entirely responsible for the operation of these coal gas plants, reporting to the station superintendent.

Q. Do you know how gas is made?

A. I do.

31525

The Master: What I mean is this—

Mr. Chambers: Oh, now, your Honor has challenged his qualifications. Let us see.

The Master: That is what I am going to do.

Mr. Chambers: First you said he was not a gas engineer, and now that is removed—

The Master: What I want to get at is this?

Mr. O'Brien: Won't you let the examination develop, your Honor, in the regular way? It is disturbing for the Master, continually with a side-fire here, to take over this examination, announcing his findings, telling us how the case ought to be tried, and all that. I say this with all respect 31526
to you, but it is unusual.

The Master: Go ahead, now.

Mr. O'Brien: Let him develop that. He might not ever have been in a gas plant and still be a gas engineer and be an expert on that subject. That was contested in the Lincoln gas case where Alten B. Adams was the expert, and he never ran a gas plant.

The Master: That is what I say, I never ran a gas plant, and I think I can draw conclusions.

Mr. O'Brien: You took Allison here. What experience had he had?

The Master: Did I say how much weight I 31527
would give his testimony?

Mr. Ransom: Not as a gas engineer.

Mr. O'Brien: I will give your Honor some citations on it—

The Master: What did Allison testify, too?

Mr. Chambers: He testified on the question of depreciation, he allowed no depreciation.

The Master: Oh, yes, that theoretical depreciation.

Mr. Chambers: Well, you took everything they offered, and every expert, so-called.

The Master: I indicated when Allison was on the stand that I was not paying much attention to it. I indicated then that I was not going to take his judgment as to what the rule ought to be.

Mr. Chambers: I want you to realize what you are doing, man to man here. Whether you give weight or not to what Mr. Hine testified to is one thing, but when you will not allow me to ask him questions upon the ground that he is not an expert, that is quite another thing. What
31529 weight you give to it I am not arguing now, but I say the testimony is competent.

Mr O'Brien: You said a few minutes ago that Lewis Nixon could go over there in an afternoon and determine whether they were getting a fair rate.

The Master: I said with a couple of engineers.

Mr. O'Brien: He was educated at Annapolis.

The Master: I said with a couple of engineers.

Mr. O'Brien: Well, Addicks was educated at Annapolis, and he hasn't had a training which would make him an expert on all the things he
31530 was called on.

The Master: Go on with your questions, Mr. Chambers.

Q. Are you acquainted with the different gas making machines, Mr. Hine?

A. Yes, sir.

Q. And do you know from your experience and knowledge and study of the situation exactly how water gas is made?

A. Yes, I know how it is made.

Q. And can you make it yourself, if you have the machinery and oil and apparatus?

A. I have.

Q. Could you step into a gas plant that was properly equipped and take charge of and operate gas making machines for water gas?

A. I could.

Q. And you are familiar with all of the apparatus used in the making of water gas?

A. Yes.

Q. And you know, you have made a study, have you, of the latest designs in water making gas, kept abreast of the times, have you, with the machinery for making water gas?

A. Yes, I am familiar with the modern machines. 31532

Q. And not only—have you operated them yourself at some time or other, in your career?

A. I have operated water gas machines that are practically the same as the latest that are built. There are a few minor modifications.

Q. And in your experience have you seen them operated?

A. Yes.

Q. In various plants?

A. Yes.

Q. In, what plants have you seen water gas machines operated, and water gas made?

A. Well, at Astoria, 21st Street, 99th Street, at 31533
all of the various plants of the Brooklyn Union Gas Company where gas is manufactured; the plant of the Kings County Lighting Company; the plant of the Brooklyn Borough Gas Company; the plant of the New York & Richmond Gas Company; the plant of the Minneapolis Gas Light Company in Minneapolis; the plant of the Haverill Gas Company, in Haverill, Massachusetts; the plant of the Richmond Gas Company in Richmond, Virginia; and in innumerable other plants, I could mention Wheeling, West Virginia; Chicago, Illinois. I do not know how many places I have seen it made.

Q. Now, with reference to coal gas machines for making coal gas, have you ever operated them, have you ever operated a machine for making coal gas?

A. Well, that is not exactly a machine. I have made it. The coal is distilled, thrown in a retort and distilled.

Q. You know how coal gas is made?

A. Yes.

Q. You have made it yourself?

A. I have been in charge of the operation of those plants.

31535 Q. And have you seen coal gas plants in operation from time to time?

A. Yes.

Q. And what plants and what territory?

A. Well, the various plants in St. Louis and Minneapolis; the plant at Astoria; the plant at 14th Street and 42nd Street; Richmond, Virginia; and several other plants, and coke oven plants at various places.

Q. And could you step into a coal gas making plant that was properly equipped with coal gas making apparatus and make coal gas?

A. I think I could.

Q. With the necessary help?

31536 A. Yes.

Q. Assuming you had the coal and the necessary other ingredients that go into it, you could?

A. Yes.

Q. You have testified in a number of cases as a gas engineer?

A. I have.

Q. Now, can you enumerate the different cases in which you have testified in court as a gas engineer and given expert testimony in regard to gas making and gas making machinery and property used in the gas making business?

Mr. Ransom: I object to the question as incompetent.

The Master: I will allow it.

The Witness. In court, in the Albany Municipal Gas Company case, I believe that is the only case in court.

Q. Now, before commission or out of court, in what cases have you given expert testimony in regard to gas making plants and gas making and mains and services and the like?

Mr. Ransom: I object.

The Master: Overruled. 31538

Mr. Ransom: Let me finish my reason. How is it material what he has done out of court?

The Master: I will see what he has to say.

The Witness: I testified in the case of the Norfolk Company before the Commission in Virginia; before the Second District Commission in the Utica Gas case; before the First District Commission in a very large number of cases. I could not even approximate the number of cases in which I have testified before that commission.

Q. Now, so far as—you know William L. Ransom here, don't you? 31539

A. I do.

Q. And he was at one time counsel to the—or purported to be counsel—to the Public Service Commission, wasn't he?

A. Yes, sir.

Q. Were you employed in the Commission at the same time when he was counsel to the Commission?

A. I was.

Q. And did you and he work together on any cases; if so, what cases?

Mr. Ransom: I object to it as immaterial.

The Master: I will allow it.

Q. Rate cases, or gas cases or confiscatory case?

A. Well, I did work on the Brooklyn Borough Gas case, which was then in court before Judge Hughes.

Q. Judge Hughes was referee in that case?

A. He was.

Q. And this same Ransom, whom did he represent on that occasion?

A. The Public Service Commission.

Q. And he was presenting the case for the Public Service Commission?

31541 A. He was.

Q. And opposing the complainant or plaintiff in that case, or trying to, however weakly?

Mr. Ransom: I object to it as incompetent.

A. Well, I suppose so.

Q. He was there representing the Public Service Commission?

Mr. Ransom: But I did not put you on the stand?

The Witness: No, you did not.

Q. And he was acting as counsel for the defendant, wasn't he?

A. Yes.

31542 Q. Did he consult you from time to time in regard to expert testimony or consult you in regard to gas engineering?

A. He consulted me on many questions relating to the subject.

Q. And you gave him this gas engineering advice from time to time?

A. I did.

Q. Did you testify before the Public Service Commission at any time while Judge Ransom was acting as counsel to the Commission?

A. A good many times.

Q. In rate cases, or what kind of cases?

A. Well, I can't say just what cases occurred then, because my memory on them is not definite enough. I know that I testified a good many times in various cases of various kinds.

Q. And did he call you on those occasions as a witness?

A. He did.

Q. And produced you and represented you as the gas engineer for the Commission?

A. He did.

Q. And examined you as a witness, as an expert 31544
witness, or as a gas engineer, upon those matters at those times?

A. He did.

Q. And you then and there in answer to his questions, gave testimony, did you, as a gas engineer?

A. I did.

Q. Do you remember how many cases like that in which you gave testimony after having them called by Mr. Ransom?

A. No, I could not state as to the number.

Q. Well, there were more than one?

A. Yes.

Q. And a number? 31545

A. Yes.

Q. Did Mr. Ransom, counsel for the complainant, in those cases which you have just mentioned, examine you as to your qualifications as a gas engineer?

A. Yes, sir.

Q. And the testimony that you gave, was it in the nature of expert testimony, largely?

A. Generally, I believe.

Q. Well, some of the questions related to that, at least?

A. Yes.

Q. You were questioned, were you, by the Public Service Commission, on a number of other cases before Ransom was counsel to the Commission?

A. Oh, a great many cases.

Q. And you testified for the Public Service Commission as a gas engineer?

A. I did.

Q. And gave expert testimony from time to time?

A. I did.

Q. Do you recall the Brooklyn Borough Gas case?

A. I do.

31547 Q. And you testified before Judge Hughes, did you, in that case?

A. No.

Q. Before the Commission?

Mr. Ransom: There wasn't any. That was before Hughes.

Q. Before the Public Service Commission?

Mr. Ransom: That was before Judge Hughes.

Mr. Chambers: Just hold on, now, I will question you in a minute.

The Witness: Yes, I testified before the Commission in the Brooklyn Borough Gas case.

Mr. Chambers: You cannot in my case, you know, represent a man as an expert in one case 31548 and then claim he is not in another, unless I get the facts on the record.

Mr. Ransom: If you can find any case where I called this man as an expert, you produce it.

Mr. Chambers: I have proved it.

Mr. O'Brien: I can produce one. You had him in the Newtown Gas Company's hearings, and you will recall where I had him under cross-examination just in the position you are in now, and how violently you went to his defense.

Mr. Ransom: I remember how vigorously Mr. O'Brien questioned his qualifications.

Mr. Chambers: We will produce the record you have made.

Mr. O'Brien: In the Brooklyn Borough case Judge Hughes saw fit to discard the testimony of Shattuck, the company's expert, and Mr. Adams, the City's expert, and fall back upon the appraisal made by the Public Service Commission and this witness.

Q. Now, Mr. Hine, you did give testimony in the Brooklyn Borough case before the Public Service Commission?

A. I did. 31550

Q. Expert testimony or testimony as an engineer?

A. Yes, sir.

Q. And later on, was that testimony accepted by Judge Hughes in the Brooklyn Borough case, your valuation or some of your valuation?

Mr. Ransom: Objected to, incompetent and immaterial.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, Mr. Goetz, who is connected with the complainant in this case, was he also associated with you in the Public Service Commission, or he was employed there? 31551

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Can you think of any other cases—the Newtown case, do you remember that?

A. Why, I could not remember just which cases came along with a certain particular counsel, and who happened to be the counsel that was handling the case at that time, no.

Q. You have now spoken of gas making, both water gas and coal gas a few minutes ago.

A. Yes, sir.

Q. Now, to continue that a little farther, are you acquainted with making gas from coke, or what would you call it?

A. It would be coke oven gas.

Q. Are you familiar with that?

Mr. Ransom: Objected to, immaterial.

A. Generally, yes.

Q. And what familiarity have you with coke oven gas?

A. Well, I have studied the plants, gone over various plants, talked with the builders of such plants
31553 and the operators of such plants, made investigations as to the probable results from the operation of such plants.

Q. Now, speaking of holders, which I have not yet asked you about; do you understand or have you had anything to do, ever, with the construction of any holders, or had occasion to observe holders being constructed?

A. Yes.

Mr. Ransom: I object to the last part of the question. Mere observation of construction is immaterial.

Q. What experience have you had relating to hold-
31554 ers?

A. Well, when in St. Louis the company purchased one holder which was erected in a pit from which an old holder was removed, which about doubled the capacity that they had in the pit. In this case I went over all of the specifications of the holders that were received from the various bidders, and was in general charge, under the chief engineer, of the installation of this holder. In the case of a large holder erected at Station H by the Laclede Gas Light Company, I also went over the bids submitted by the various manufacturers and tabulated these for the information of the chief engineer, so that he

could compare the various bids, and was in direct charge of the installation of the foundation and left just before the erection of the holder started. The material was then partly on the ground.

Q. Can you recall any other holders with which you had to do, by way of construction or operation?

A. There were other holders I had something to do with in regard to operation, but no other holders where I had anything directly to do with them as regards construction, that is my being in charge of construction. I have as a gas engineer for the Commission observed carefully the erection of several 31556
holders that have been put up here?

Q. Here in the City?

A. Here in the City.

Q. Can you recall any of those, where located?

A. Well, the Brooklyn Borough Gas Company's holder; I was down there many times when that was put up, and I guess that was the one I was most familiar with here. I have generally observed the construction of holders wherever they were being put up in a town where I was passing through or had a chance to see the construction, or when under construction.

Q. Do you know what apparatus is necessary and 31557
necessarily used in connection with a gas holder?

A. Yes.

Q. What apparatus is used in connection with a holder, to operate the holder, and so on, disregarding my lack of knowledge on the subject?

A. Well, in connection with the holder you would have to have some sort of heating arrangement for heating the water in the cups in this neighborhood; and then in connection with the same there would probably be a pumping station or governor station.

Q. What is that for, the pumping station?

A. That would be for taking the gas out of the holder, or the governor would be for reducing the pressure for consumption on the streets. The pumping station would be used if it had to be transmitted great distances so as to increase the initial pressure as the gas was taken from the holder.

Q. What is the water used for? Why is the water used in connection with the cups?

A. Well, that forms the seal between the cups as the holder goes up and down.

Q. Then, what have you had to do with mains?

31559 Are you familiar with mains for transporting gas through the streets or transporting gas generally from plants to holders and holders to the consumer?

A. Yes.

Q. And holders to holders?

A. Yes.

Mr. Ransom: How could he be familiar with mains? The question is leading and incompetent in form.

Q. What experience have you had, Mr. Hine, in connection with mains used in that connection.

A. Well, I have designed—worked on the design of mains, seen the installation of mains all over this

31560 City at various times, studied the cost of mains installed in this City by various companies and at various times, and have laid out piping for holders stations works and planned on the size of mains required for streets for certain conditions.

Q. Had experience with paving over mains?

A. I have never had direct charge of them.

Q. I mean, not in charge, but you know how that is done?

A. Yes.

Q. You have seen them lay mains, or know of their laying mains under paving?

A. Surely.

Q. You know the conditions generally encountered say in the last few years in laying mains in the city?

A. Yes.

Q. And you knew something of it before that time?

A. Yes, I have studied that factor.

Q. Now, services, what do you know about services, what is generally called services?

A. Why, a pipe leading from the main to the house, and I am familiar with their general type of construction and the way they are put in.

Q. Are you familiar with the meters as generally used here in the City of New York? 31562

A. Yes, sir.

Q. And what experience have you had in regard to meters?

A. Well, I have studied the testing of them, made studies of the proof of meters. That is about all. The type of meter has not changed in many, many years.

Q. For instance do you recall what different types are general in use? There are two types?

A. Well, the meters that are used here are generally called the ordinary or regular meter and the prepayment meter, which are generally the same except that one has a coin box. 31563

Q. And the meters generally used in this locality are pretty much the same?

A. Yes, sir.

Q. And they are manufactured by concerns that make meters their speciality?

A. Generally, yes.

Q. To go back to the plant that makes the gas, are you acquainted with the different standard of measuring gas or of—yes, the heating and the candle power of gas?

A. Yes, I am acquainted with that.

Q. Do you know how that is done; I mean generally do you know how the candle power is determined, of gas?

A. I do.

Q. Can you do it yourself?

A. I have done it many times.

Q. The other standard is what is known as the heating quality of the gas, is it not?

A. Yes, the heating value.

Q. How is that measured?

A. That is measured by burning a certain amount
31565 of gas in a calorimeter, measuring the amount of gas and measuring the amount of water heated, and by observing the temperature rise obtaining the heat content of the gas that was burned.

Q. Is there a standard in this country for the heating quality of gas, a recognized standard?

A. Well, it is called the British Thermal Unit. The unit of measurement is called that.

Q. Can you determine the British Thermal Unit of gas?

A. I can.

Q. If you have the proper apparatus?

A. I have many times.

31566 Q. To return to the plant itself, we have spoken generally of the building; what is the main building or what buildings are necessary generally in a plant itself to manufacture gas? If you will, please, take a water gas plant first.

Mr. Ransom: Objected to as incompetent.

The Master: I will allow it.

Mr. Ransom: Exception.

A. Well, the buildings to house your apparatus or machines, and then if your purifiers were of the enclosed type a building for those. The meters have to be located somewhere. You might have one building,

you might have a dozen buildings, depending on the character of the plant and the individuality of the designer. The condensers might be located inside or outside. Generally speaking you would have a building for your machines, and that is about all I could say generally.

Q. The machines, will you explain, please, generally the character of the machines used in a gas plant?

A. Well, there are two types of water gas machines —generally speaking there are. There is the so-called United Gas Improvement type, which consists of three shells, a generator, carburetter and superheater. Then 31568
there is the Williamson type of machine, which is also used considerably in this City and in Chicago, where the generator is located on the floor and the carburetter and superheater are located above the generator, in the same shell, which is enlarged, and the top part of the machine is just divided to form the generator and superheater. Otherwise it is the same in its operation as the United Gas Improvement type or the Lowe type.

Q. What is generally done in these water gas machines; that is, how is gas made?

A. Well, the generator is filled with coal or coke and the whole machine is heated up by blowing air 31569
through this bed of fuel. The gas is then passed through the carbureter which is filled with checker brick and they heat these checker brick. Then the gas is continued on through the superheater, which is also filled with checker brick, and this becomes heated. After the whole machine is heated up the air blast is shut off and steam is turned into the generator and, passing through this incandescent fuel bed, forms so-called water gas, which is then enriched by the addition of oil in the carbureter. The oil is sprayed through the top of the carbureter and,

heating the checker brick, is turned into gas and unites with the uncarbureted water gas to form a so-called carbureted water gas, and this is fixed in the superheater so that it will not lose its candle power—so that it will not disintegrate when it goes out into the system. That is the general function of the machine.

Q. The purifier house, to what use is that put? A. That is for removing the sulphur from the gas. The gas passes through the purifiers which are filled with iron oxide, and the sulphur contents removed, H^2S.

31571 Q. The scrubbers now, what are they used for?

A. Well, scrubbers are used as part of the purification apparatus, to remove some of the tar from the gas in a water gas process, just the vapor that was left in the gas and they had not gotten out before.

Q. What is the relief holder? Do they usually have a relief holder in a water gas plant?

A. Yes, sir, in a water gas plant. I forgot in describing the operation that it is an intermittent process. After you have made gas a while you must heat up the machine again so that you will have a run and blow, then a run and blow again. In order that the gas may pass through your plant in fairly even quan-

31572 tities and you do not have to run your exhausters and machinery to take care of the amount that you are making at the particular moment, there is usually a relief holder used so that the gas will go into this relief holder and you can pump it through the purification apparatus evenly.

Q. What is the function of an exhauster?

A. Well, in a water gas plant that is used to take the gas from the relief holder and force it through the purification apparatus, scrubbers, or whatever you may have, into the regular holder.

Q. Take a coal gas plant, Mr. Hine, what is the general layout of a coal gas plant?

A. Well, in the coal gas plant you have retorts, made of clay generally, and they are arranged in benches of varying number, and the retorts are of varying sizes depending upon the particular plant. Coal is placed in these retorts, the retorts being heated by a separate fire, generally coke being used to heat up the retorts. The heat in these retorts distills the gases out of the coal. The gases go up through the stand pipe into the hydraulic main where there is a water-seal and some of the ammonia is removed. Then the 31574
gas goes through, generally speaking, the same process as you use in water gas manufacture for its purification, except that you have to remove the ammonia. You get an extra residual there of ammonia. Then the gas is distilled out of the coal it leaves coke in the retort, which is removed from the retort and gives you a residual. Sometimes these retorts are charged by hand. That was the older practice. Generally now they are charging them entirely by machinery and drawing the coke by machinery and removing the coke by machinery, so as to cut down the tremendous amount of hand labor that was required. And also the practice now is to go to larger retorts or coke 31575
ovens rather than the small units that were used in the older days. That is the tendency, but a great many retort houses are still being built.

Q. Will you describe the coke oven plant and lay-out?

A. Well, that is generally speaking just the same thing as a coal gas plant, except that the coal and coke are handled in large quantities. The retorts, instead of being small retorts taking a few hundred pounds of coal, will take several tons of coal. It is for quantity production.

31576

The Master: Mr. Chambers, I will tell you what I think the trouble has been: In trying to elicit this expert or opinion evidence you have not framed a hypothetical question based upon the facts that you claim are included in the record.

Mr. Chambers: Well, possibly so.

The Master: I have been thinking while you have been examining Mr. Hine, and I think you have been trying to shortcut. That is where the trouble has been.

Mr. Chambers: I see that quick as a flash.

The Master: I think you ought to frame a
31577 hypothetical question so that I can see what you are basing an opinion on.

Mr. Chambers: Yes, quick as a flash I see that. I think that is a good suggestion, that had not occurred to me before.

The Master: As to some things Mr. Hine is undoubtedly qualified.

Mr. Ransom: But as to the kind of things they have been asking him about?

The Master: Well, I don't know. That is the reason, I have been groping around. There has been something wrong about this proof that I have not been able to get quite clear, and as Mr.
31578 Hine went on it seemed to me that he was qualified to testify to some things. For instance, he seems qualified to testify as to this coal gas apparatus at 14th Street, that it is an old plant, not up to date. I take his statement for that. He apparently is sufficiently familiar with that kind of work. He can probably say that something else is no longer used in gas plants, or that something else is not done. I do not know how far I am going to allow him to say that it is not necessary for this company to have the 42nd Street plant.

31579

Mr. Chambers: I am going to back up and make a fresh start. I think you are right about it.

The Master: I do not think I can pass on the question unless there is a hypothetical question assuming certain facts are in evidence. I will not let him assume something that is not in evidence. But you ask him, "Assuming these facts, do you say this or that," and then I can pass on that particular inquiry.

Mr. Ransom: Might I ask him a few questions as to his qualifications?

31580

Mr. Chambers: Then you will know it is a hypothetical question—I mean the Court will be advised.

The Master: Yes, you can ask him those questions.

Mr. Chambers: I think Judge Ransom is estopped from claiming he is not an expert or gas engineer.

The Master: No, there is nothing to that.

Mr. Chambers: I am willing that he should examine him on his qualifications.

Mr. Ransom: I have a few questions on qualifications; I shall not examine him broadly upon them.

31581

Mr. Chambers: I was not quite through, but go ahead.

The Master: I thought you were about exhausted.

Mr. Chambers: Well, I was. I had covered the ground pretty thoroughly, I thought. Maybe there is some more I had not thought of.

Mr. Ransom: About all Mr. Chambers knows about the gas business has been covered.

Mr. Chambers: No, not that I know—Mr. Hine knows.

Q. Are you consulting engineer to the Bureau of Standards on gas matters?

A. I was consulting engineer. The title has been changed now; I have forgotten the exact title.

Q. Tell us about that, Mr. Hine. What is the Bureau of Standards?

A. To act in a consulting capacity on various questions relating to the gas industry.

Q. What is the Bureau of Standards?

A. It is the United States Bureau of Standards.

The Master: It has to do with quality?

31583 The Witness: With all sorts of standards, gas measurement and gas quality. They put out booklets on standards of measurement of every description and standards for testing.

Q. And you now handle the gas end of that?

A. I am still retained by them to assist them at times.

Mr. Chambers: I think that is all. There may be some things I have omitted—probably have.

Mr. Ransom: I shall only ask him one or two things now with respect to qualifications on the kind of testimony he has attempted to give, with respect to Exhibit AA-26.

31584 Cross-examination by Mr. Ransom:

Q. What was your title when you first went to the Laclede Company?

A. Beg pardon?

Q. What was your title when you first went to Laclede?

A. Assistant to the superintendent.

Q. You were not assistant superintendent?

A. They did not have any.

Q. You were one of the assistants to the superintendent?

A. One of the assistants to the superintendent.

Q. And you remained in that capacity during the time of your first association with the Laclede Company?

A. Two years, about.

Q. When you went back as what?

A. Assistant to the chief engineer.

Q. In charge of the drafting room?

A. No, that was only one of my duties.

Q. Were you at any time superintendent or manager of a gas company or a gas system?

A. I was not.

Q. Did you ever have independent charge of the 31586
operation of any gas company or gas system?

A. No. Full charge you mean?

Q. Independent charge.

The Master: Yes, full charge.

Mr. Chambers: What do you mean, the bookkeeping and everything?

A. I had full charge of these works. When I was in charge of the works on certain days I was the only one there in charge.

Q. Well, were you ever in charge so far as responsibility for policies, or so far as questions of what property should or should not be used, or what apparatus should or should not be used anywhere? 31587

Mr. Chambers: I object to that. I submit there is no living person ever covered that field. Look at the Old Guard of the Consolidated Gas Company; there is no man there, not one, who is in charge of all that. Each one of them comes on here and has his little bit to do.

The Master: Then the witness's answer is no.

A. It is no.

Q. You never were chief engineer anywhere?

A. No.

Q. Of any plant or system?

A. Of any gas company? No.

Q. Did you ever lay mains?

A. No, not directly.

Q. Well, did you ever lay them indirectly—ever have charge of the laying of mains?

A. No, not that way.

Q. In any way did you ever have charge of laying mains?

A. Yes.

Q. How?

31589 A. Well, in that I was under the engineer in charge and going over the work, the work that was directly under the charge of J. D. Von Maur, the superintendent himself.

Q. Were the men under your immediate direction?

A. No, they were under Mr. Von Maur's.

Q. You had charge of the retort houses at the time you were with the Laclede Company?

A. Two retort houses.

Q. Did you ever advise this company or were you charged with the duty of advising the company as to what property should be acquired for future uses?

A. Why, I have advised them, yes.

31590 Q. You did at that time?

A. I have given them my opinion on those matters, yes.

Q. What was your salary at Laclede?

A. When?

Q. When you started?

A. When I started it was $60 a month.

Q. And when you finished?

A. I do not remember what it had got to then. Not very much.

Q. Well, how much, $100 a month?

A. No, it could not have been that much.

Q. Not that much?

A. Not that much.

Q. Well, what was it the second time you were there?

A. I think when I left there I was getting $125 to $150.

Q. When you left the last time?

A. When I left the last time.

Q. Members of the Commission's staff appeared as experts and were called by the Commission and the Attorney-General and by the Corporation Counsel in the Brooklyn Borough case before Judge Hughes as 31592
witnesses?

A. Yes, sir, there were.

Q. You were not called to testify as a witness by the Commission or by the Corporation Counsel or by the Attorney-General?

A. No.

Mr. Chambers: That is where you showed poor judgment.

Q. Is it not a fact that you advised that the 80 cent rate in 1917 was confiscatory?

Mr. Chambers: Just a minute.

A. What 80 cent rate?

Q. The 80 cent rate prescribed by the Act of 1896, 31593
as amended by the Act of 1914, which was under review in that case—the Act of 1916.

A. As applied to whom?

Q. To the company that was the complainant there.

A. What company was it?

Q. The Brooklyn Borough.

A. I believe that I did say that was confiscatory as applied to the Brooklyn Borough.

Q. And you so advised in writing?

A. If I thought so I certainly did.

The Master: What has that to do with this qualifications?

Mr. Chambers: Ask him about the Consolidated, why don't you?

Mr. Ransom: I may pretty soon.

By the Master:

Q. At that time you were connected with the Public Service Commission?

A. I was.

Q. What year was that?

Mr. Ransom: 1917.

31595 A. It must have been 1917, yes.

Q. Did you make an analysis as to the cost of making and distributing gas?

A. Well, in that case I had made a valuation some time before.

Q. I do not care about valuations; in reaching that conclusion did you have to figure what it cost to make and distribute gas?

A. Oh, I had gone over that as compiled by our statistician.

The Master: Was that a question of actually making and distributing gas?

The Witness: I have followed it up in a great

31596 many cases.

The Master: I mean since you reached that opinion.

Mr. Chambers: Do you mean has he kept up on it?

The Master: Yes.

The Witness: Yes, I have kept up on it.

The Master: Are you going to ask Mr. Hine what it cost to make gas?

Mr. Chambers: We are not quite ready for that yet, I want to lay the foundation of what is used and useful. I will try and satisfy you on

all points if you will be patient and let me get in the foundation. The other will come so fast you won't complain.

The Master: We have the foundation. Mr. Hine has been qualified to say what it cost to make and distribute gas, and I would like to hear what he has to say about it.

Mr. Chambers: Let us see what is used and useful first, and how much they have made, and then let us get down to that other question. I notice Mr. Ransom put it off to the last minute. 31598

Q. Will you describe in detail the method of heating up a water gas system?

The Master: I think we have had that.

Mr. Ransom: I want to show whether he knows any of these things or not. He said he was able to do it, and your Honor may attach some importance to his statement.

The Master: No, I won't take it. I won't get into any argument here between Mr. Hine and your expert as to whether he is right or wrong, and when we get all through I won't know whether he is right or wrong.

Q. Will you describe in detail the method of starting up a new gas plant? 31599

The Master: I won't take it.

Q. Bearing in mind the danger.

The Master: I won't take it.

Mr. Ransom: Exception.

Q. Do you know whether there is any difference in the plant capacity of water gas when using anthracite coke, and gas-oven coke?

A. There would be a slight difference, I should say.

Q. What is the difference?

A. I could not say that; I don't believe it would be much, not material.

Q. Not material?

A. No.

Q. In establishing plant capacity which unit would you use?

A. That would depend on just what I wanted. If I was establishing a plant capacity as to what I could get out at one time for a short time, I would take the maximum make of all the machines. If I wanted the average running capacity that would be a different thing. That would have to be defined.

31601

The Master: Remember, Judge Ransom, this is only on the question of qualification.

Mr. Ransom: Well, I don't know but what I will refrain from that at this time, because it does not relate particularly to the question as to which they are now asking him. If he attempts to testify on gas operations I shall want to go into those things, but at the present time I have asked such questions as are designed to show that he is not qualified and has had no experience which entitles him to pass, from an executive and operating viewpoint, on the question whether a particular property should or should not be used, is or is not required.

31602

Mr. Chambers: Coming from Ransom, I think no weight should be attached to that.

The Master: I will pass on that when I get the proper form of question.

By Mr. Chambers:

Q. I would like to ask Mr. Hine if the fact that he expressed the opinion that the statute was confiscatory as to the Brooklyn Borough is the reason why he was not called by Judge Ransom in that case?

A. I can't state Judge Ransom's reasons.

Q. He knew about your opinion, didn't he?

A. He certainly did if I put it in writing.

Q. And Judge Hughes declared the 80 cent law as to that company confiscatory?

A. So I understand.

Q. And thereby adopted or bore out your opinion about it?

A. Yes, sir.

Mr. Chambers: His opinion was right in that case. Now, I think perhaps it would be better if I took a little time, in the light of what the Master said—I think your suggestion was a good 31604
one, and I adopt it, and I think I can work out perhaps two or three hypothetical questions that will cover the ground, and perhaps you will let me ask him and get an answer. I think you will be advised in that way that the hypothesis is hypothetical, and be governed accordingly.

Mr. Ransom: Based on the record.

The Master: It has to be based on facts in the record.

Mr. Chambers: Yes.

The Master: You have got to put the question assuming a certain number of plants and a certain capacity, either generating or operating 31605
capacity, and assuming all the other conditions in this record; and if he uses any of these tables, clearly limiting it to the basis on which the tables are made. Then I will see whether I will allow the question.

GEORGIE E. GOLDTHWAITE, recalled:

CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Goldthwaite, referring to Exhibits AA123 and 124, Tables 159 and 160, are those made up to show the number of holders on the Consolidated system, and the storage capacity of those various holders?

A. They are made up to show that as entered in those reports.

Q. That the company has that many holders and
31607 their storage capacity is so much?

A. As shown on those reports.

Q. You are clear that it is intended to show what the company reported as to the number of holders and their storage capacity?

A. Yes, sir.

Q. Do you know, or has anyone told you the difference between storage holders and relief holders?

A. Why, I know the difference, I think, between a storage holder and a relief holder.

Q. What is a storage holder?

A. That was not considered in the table.

Q. Which was not?

31608 A. The difference.

Q. This includes both relief holders and storage holders?

A. Both relief and storage holders if the relief holders were reported. I am not sure that they were reported for all years.

Q. Are you sure that on Exhibit AA123 you have shown both the relief and storage holders in all instances?

A. If the relief holders were shown in the reports I have included them in the table.

Q. Can you identify on this exhibit as to which of these companies storage alone are shown, and as to which storage and relief holders are shown?

A. No, I made no note of that.

Q. For example, the Consolidated Company in 1912, you say, reported that it had forty-four holders. Is that storage holders alone or storage and relief holders?

A. If the report for that year, forty-four holders, including storage and relief holders, that would include the relief. If they did not include the relief holders this would not. 31610

Q. And in 1916, the Consolidated, you say, reported how many?

A. Thirty-seven.

Q. Is that storage holders or storage and relief holders, both?

A. I told you that it is holders that are included in the report for that year. I made no distinction, I don't know.

Q. Are the relief holders separately shown on these reports?

A. In some cases they note that a relief holder is included, yes, in some cases.

The Master: Well, if they showed them you included them anyhow. 31611

The Witness: I included it anyhow, yes.

Q. Now, is it not a fact that these small relief holders located just in advance of the purification apparatus really are not holders at all?

A. They call them holders. I did not consider that part of it myself. I made up the table according to instructions.

Q. Don't you know that in the uniform system of accounts relief holders are not classified as holders at all?

A. I don't know anything about the uniform system of accounts.

Q. Is this a fair comment on your Table 159 and your Table 160 that in some instances you have included relief holders and in other instances you have not?

A. I have included all holders reported.

Q. Whether they are shown as relief or not?

A. Whether they are shown as relief or not.

Q. And with respect to the Consolidated Company, for example, in some years you have included relief
31613 holders, and in others you have left them out?

A. Probably; if they are in the report sometimes I left them out sometimes.

Q. Why didn't you discriminate between relief and storage holders?

A. Because I was not the judge on that.

Q. Who was the judge?

A. The men who employed me.

Q. And they told you to put in relief holders in order to show storage capacity?

A. No, they didn't; they told me to include holders reported to the Commission.

Q. Didn't you understand that the purpose of this
31614 exhibit was to show the capacity that the Consolidated Gas Company and the other companies have for the storage of gas available for use on the district?

A. Well, I may have understood that, but it had nothing to do with my—

Q. Well, did you understand that?

A. Well, I didn't understand the purpose of the table. I supposed it was to support certain testimony. I made it up according to instructions.

Q. In view of the fact that some of these years you have put in relief holders and in other years left them out—

Mr. Chambers: I object to his towering over the witness and trying to make him say something that he hasn't said.

The Master: He can't help towering over him, can he? That is not his fault.

Q. I show you the Consolidated report for 1918, which is one of the defendants' exhibits, and ask you to show the figures that you took for the Consolidated, where you got the number of holders that you put into this table, and the capacity which you call holder capacity?

A. The number I have reported is 31. The number 31616
at the foot of the column here is 31.

The Master: The witness refers to page 46 of the 1918 report of the Consolidated Gas Company, the total 31 being a column which shows three relief holders, one with a capacity of 100,000 cubic feet, one with a capacity of 350,000 cubic feet, and one with a capacity of 350,000 cubic feet.

Q. You put in both relief and storage holders?

The Master: He has said that.

Mr. Chambers: There is no use of asking him half a dozen times. He said he put in whatever holders they reported. 31617

Q. I show you the report for 1913 and ask you where you found in that the holders that you put in this table?

The Master: The stenographer will please place on the record that I read from page 46, as follows:

"(1): Show hereunder the particulars called for concerning gas holders at the works or outlying stations at the close of the year. Relief holders as well as those used for storage are to be included in this schedule; but any holders used

for relief should be so distinguished by a footnote or otherwise."

A. Well, I can't count up that column. I could take the time to do it.

Q. I show you a report of the Consolidated Gas Company for 1914, which is one of the exhibits, a page there called "Gas Holders."

The Master: Is this the page that you used, that is marked Page 46?

The Witness: Yes.

Q. How many does that add up, the page called
31619 "Gas Holders"?

A. It adds 40 there.

The Master: I count 40.

Q. I show you another page called "Relief Holders" and ask you whether you mixed those right in to the gas holders?

A. Apparently I did. It is the report for 1914, and I have 43 here.

Q. And a separate page is shown?

The Master: Your 43 is the total of the two sheets, one, "Gas Holders (222)" and the other "Relief Holders (221)."

A. Yes, sir.

31620 Q. I show you the 1913 report of the Consolidated Gas Company, which is one of the exhibits here, and ask you whether you included the relief holders in 1913?

A. I included all holders shown on that sheet.

The Master: How many did you report?

The Witness: 44

The Master: Is that what this totals?

The Witness: 44 is the total of that sheet.

The Master: It is marked "Gas Holders (222)."

The Witness: Yes, sir.

Q. But does not include relief holders?

A. I included all the holder on the sheet. I do not know whether it includes relief holders, or not.

Q. And you did not ascertain?

The Master: You do not find on this list of the holders given on page 46 for 1913, any holders designated as a relief holder?

The Witness: I do not see it now.

The Master: Is it a fact that there was a change in the requirements of the Commission along about this time? Because I see in 1913 they have one sheet (*222*) gas holders and in 31622
1914 there are two sheets "*222*, gas holders" and "*221* Relief Holders," and then in subsequent years there is *222*, which contains a requirement that you specify Relief Holders with Gas Holders, in that same account.

Mr. Ransom: The fact is as to the Consolidated alone, I believe, in 1914, the Commission adopted a requirement that the Relief Holders also be shown and that they are not a part of the Gas Holders under the uniform system of accounts, and they required them to be separately shown, separately stated, and they have been ever since that time, but as to the other companies 31623
they did not require that.

Q. Did you put Relief Holders in wherever you found them indicated?

A. To the best of my recollection wherever they were indicated in the report.

Q. I show you the Astoria reports for 1918, and the sheet therein contained regarding holders, and ask you whether in showing the number of holders and the capacity of holders at Astoria, you included both Relief and Gas Holders?

A. In 1914?

Q. 1918?

A. Yes, 1918 I included a Relief Holder.

Q. One storage holder and one relief holder, is that correct?

A. For 1918?

Q. Yes.

A. As reported there, yes.

Q. Of what capacity are those two holders?

A. The capacity of one holder here is given as fifteen million cubic feet, and the capacity of the other is one million cubic feet.

31625 Q. So that in Exhibit 123 you show two holders, do you?

Mr. Chambers: The exhibit shows he showed two.

A. In 1918.

Q. Isn't it a fact in Table 160, you put in the capacity of only one holder?

A. I cannot say.

The Master: Where is this 1913 Consolidated report?

Q. Just look at that sheet in the 1918 Astoria report?

A. No, it appears I included the capacity of two

31626 holders.

Q. You included the Relief Holder

A. I included the Relief Holder.

The Master: The stenographer will please note that in the 1913 printed form of annual report, Form A, Gas and Electric Corporations, Public Service Commission, First District, the section headed, "Gas Holders (222)" contains the following printed instruction, "1. Show hereunder the particulars called for concerning Gas Holders at the works or outlying stations at the close of the year." There appears to be no require-

ment there to include Relief Holders. And the 1914 report contains language previously quoted from the 1918 report, "Relief Holders as well as those used for storage are to be included in this schedule." So that they apparently made that change beginning with the 1914 report.

Mr. Ransom: But only as to the Consolidated.

The Master: That is the printed form that I am reading from. I do not know why they made any different rule as to other companies.

Mr. Chambers: Well, they did not.

The Master: It is a printed form. 31628

Mr. Chambers: There is nothing to show that they made any different rules for the Consolidated.

The Master: Now I have before me the Astoria 1918 report, page 46, and that is the same form as the Consolidated, "Relief Holders as well as those used for storage are to be included in this schedule 222."

Q. Didn't you know that Relief Holders do not contain gas that is suitable for commercial use, or that is ready for commercial use, so that they are not used for gas storage at all?

A. I may have known it. I probably did. 31629

Q. And yet you included them in this statement of holder capacity?

A. I included them where they were reported, yes.

Q. Although you could just as well have confined your table merely to storage holders?

A. I could not. I made up the tables according to instructions, and according to the reports.

The Master: If the purpose of this schedule was to show the storage capacity of gas ready for delivery, I am going to strike it out as not showing it.

31630

Mr. Ransom: I so move.

The Master: I will hear what Mr. Chambers has to say about it.

Mr. Chambers: I did not get that.

The Master: I say if these two schedules are intended to show the storage capacity of gas ready for delivery to consumers, I shall have to strike it out.

Mr. Ransom: I move to strike out Exhibits AA123 and AA124.

Mr. Chambers: No, it is for the purpose of showing all.

31631

The Master: Showing all what?

Mr. Chambers: All the holder capacity.

The Master: The holder capacity for what?

Mr. Chambers: Of the companies as reported.

The Master: To hold what kind of material, oil?

Mr. Chambers: Gas.

The Master: What kind of gas, ready for delivery to customers?

Mr. Chambers: No.

The Master: What is the purpose of having relief holder capacity?

Mr. Ransom: You see under Section 221 of

31632

the uniform system of accounts it is specifically provided that relief holders are a part of station works and structures, and gas holders is a separate account.

The Master: I have asked Mr. Chambers a question.

Mr. Chambers: They might be used this year, a relief holder might be used this year and not used next year.

Mr. Ransom: A relief holder is a little holder that is used for equalizing. Mr. Hine covered it in his testimony. You could not send gas out of

31633

the relief holder to consumers. It would be a violation of law, because the gas has to be purified, and it takes time to send it through the purifiers. This all has a very great bearing, because of what Mr. Hine undertook to state with respect to holder capacity.

The Master: We might just as well understand it. If there is any purpose here at all of producing any information or separate evidence based on the storage capacity of gas intended to be sold to consumers, in other words, without quibbling, if it is intended to rely upon proof of the storage capacity of these companies as distinguished from the relief holders used as a part of the plant, we might just as well understand it now I am not going to use these schedules, or permit them to be used.

31634

Mr. Ransom: Mr. Hine already testified this morning that his five per cent estimate was based on holder capacity.

The Master: I understand what he testified to.

Adjourned to Friday, January 16, 1920, at 9:30 A. M.

31635

Last Complainant's Exhibit 456.
Last Defendants' Exhibit AA140.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 31639

ABRAHAM S. GILBERT, Special Master.

NEW YORK, January 16, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 31640
MR. O'BRIEN, of Counsel for defendant Swann.

GEORGE E. GOLDTHWAITE, recalled:

CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Goldthwaite, referring further to Exhibits AA-124 and AA-123.

A. What table numbers are those?

Q. Tables Nos. 159 and 160, showing the number of holders and their purported storage capacity, of the Consolidated system companies. 31641

A. Yes.

Q. Did you read the testimony in this case to find out how many of these holders had been retired during 1919?

Mr. O'Brien: The testimony of whom?

Mr. Ransom: The testimony in this case.

A. No, I did not.

Q. Did you examine the books of the company or of the companies to find out how many of these holders had been retired?

The Master: It seems to me that is a waste of time.

Mr. Ransom: Did you?

The Master: He did not do anything else than what he said he did. Did you?

The Witness: No.

By the Master:

Q. Simply took the information that you found in
31643 these reports?

A. Took the information from these reports.

Q. And you did not do anything else?

A. No, nothing else.

Q. You did not make any tests or go up and look at the company's books or anything else?

A. Not in regard to the holders.

Mr. Ransom: I renew the motion which I made at the close yesterday.

The Master: I have concluded to deny that motion, because this is a tabulation which says that what is reported as holders—

Mr. Ransom: Well, they call it holder capa-
31644 city and they build a lot of calculations on it.

The Master: My mind runs back to what I said yesterday. If there is any purpose at all in producing any information or evidence based on storage capacity; in other words if it is intended to rely upon proof of storage capacities of these companies as distinguished from relief holders, we might as well understand it now. If they do not want to take a position on it, I am not going to force them to; but when they come to base any evidence on the storage capacity they will be in trouble.

Mr. Ransom: The situation is in the first place there are nine relief holders in this table, as to 1918, as to some companies, and the relief holders of others in some years are out.

The Master: Yes. When they come to base a hypothetical question on that kind of evidence they will be in trouble, that is all.

Mr. Ransom: Furthermore, of the holders which they show here, the number and capacity, on which they base their subsequent capacity of holders, with sales and the like, seven of them have been retired and written off during 1919. 31646

The Master: I will deny the motion, but when it comes to expert evidence based on facts, then they will not go in, that is all.

Mr. Ransom: But it has gone in in Mr. Hine's testimony.

The Master: On what?

Mr. Ransom: On that ridiculous five per cent figure.

The Master: No, I did not base it on any such thing, on what the reserve ought to be.

Mr. Ransom: He did. He did in one of his factors.

The Master: Let us get along. 31647

By Mr. Ransom:

Q. As to Table 157, Exhibit AA-122, entitled "Gas Production and Sales Consolidated Gas Company, 1906-1918," did you attempt to set forth for the several items the quantities and figures reported for the corresponding items on the pages of the annual report from which you testified you transcribed these figures?

A. I set down the items, as I stated the other day, which were taken from the reports. I stated which ones were taken from the reports and which ones were computed.

Mr. Ransom: The Commission has not brought those reports here.

Mr. Goetz: They said they would be here at 9:30.

The Master: Will we suspend until they get there?

Mr. Ransom: I will see what else I can take up with the witness.

Q. Mr. Goldthwaite, your Table 161, Exhibit AA-136, Ratio of Manufacturing to Holder Capacity, is based on your Tables 159 and 160, Exhibits AA-
31649 123 and data AA-124?

A. I computed that data from Tables 159 and 160, yes.

Q. The comparisons you there make between manufacturing and holding capacity depends wholly on the accuracy of your Table 160?

A. Depends wholly on the figures in the tables, because that is what they were computed from.

Q. And likewise your Table No. 162, Exhibit AA-137, with the inferences there drawn as to the relation of holder capacity to average daily sales to the public, depends on your Tables Nos. 159 and 160?

A. 157 and 160.

31650 Mr. Ransom: I move to strike out Exhibits AA-136 and AA-139 on the ground that even for the years that they purport to cover they are not a proper basis for any such inferences as are there set forth, or any such comparisons as are there made, and on the ground that they do not in any way undertake to speak of 1919 and 1920.

The Master: Motion denied.

Mr. Ransom: I cannot do anything more with this witness until I get the reports.

The Master: Who is responsible for those reports; why are they not here? Can you not cross-examine Mr. Pyle?

Mr. Ransom: We need the reports for Mr. Pyle, I can cross-examine Mr. Hine on the 5 per cent factor.

The Master: Are you prepared to go ahead with Mr. Hine?

Mr. Chambers: Not until later.

The Master: What else have you got to go on with?

Mr. Chambers: There is Mr. Pyle here for 31652
cross-examination.

The Master: Then what else?

Mr. Chambers: I have some men from the Tax Department. There is Mr. Frank for cross-examination. Mr. Clark went out to see if he could not get him on the phone.

The Master: Unless I am fully occupied today I am going to start evening sessions Monday.

Mr. Chambers: I will have to protest. The hours have been very exacting now.

Mr. Ransom: I would like to take up Mr. Hine on this 5 per cent matter.

The Master: Go ahead. 31653

WILLARD R. HINE, recalled.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Hine, yesterday at page 9299 of the mimeograph record referring to the Fourteenth and Forty-second Street Plants, when the Master said, "Show me how you would operate these plants other than and differently than Mr. Woods has been operating

them," you said, "I think I would have to say I have not said anything of that kind at all. With those plants there I might use them. Now, I ask you if you had been and were the chief engineer in charge of the operation of the Consolidated Gas Company would you have operated the Fourteenth and Forty-second Street Plants during the present winter?

A. I do not know.

Q. You have not any opinion on the subject?

A. I have not got the data to form the opinion on.

31655 Q. When were you last in either of these plants?

A. I think about August of last year.

Q. Of 1919?

A. August or September.

Q. You have not been near them since?

A. Yes, I have been near them; I have not been in them.

Q. Before that when were you last in them?

A. Well, I cannot say as to that.

Q. Do you say as an operating matter you would not have fired up these plants in November or early in December of 1919?

A. I did not say that.

31656 Q. Will you say?

A. I cannot say; I have not got the data.

Q. You have not any impression about it?

A. I have not got the data.

Q. You have not any impression about 1919 conditions?

A. Well, I have not got the data.

Q. Have you made any effort to get the data?

A. I have not made a study of 1919.

Q. Or 1920?

A. No.

Q. Are you willing to say it is not necessary to fire up and use these plants during the present winter?

A. I do not know.

Q. Or future winters?

A. I do not know.

Q. You have no opinion on the subject?

A. I have some opinions on the subject, yes.

Q. What are those opinions?

A. Well, in my opinion those plants should not be started up and if there is not enough capacity without those, capacity should be secured somewhere else.

Q. You believe, then, that both these plants should 31658
be withdrawn from service?

A. I certainly do.

Q. And ought to be treated accordingly under the uniform system of accounts of this company?

A. I do not care about the uniform system of accounts, but they ought to be treated as withdrawn from service for the purposes of this case, in my opinion.

Q. And immediately?

Mr. O'Brien: I think that this uniform system of accounts ought to stay at rest.

The Master: It is not going to rest on that alone.

31659

Q. Do you think that they should have been withdrawn before this present winter?

A. I think that for a considerable period of time those plants were of no particular value from an operating standpoint in that they were too expensive to operate.

Q. You say that they are not ample—

Mr. Chambers: Let him finish.

Mr. Ransom: I thought he finished.

Q. Did you finish your answer?

A. No.

Q. Well, finish it now.

A. They were too expensive to operate, in comparison with the other plants of the system and in comparison with modern plants, and that they are not modern, have not been modern; that they are not equipped with labor saving machinery, that they are not a type of plant that can be started up quickly to take care of an emergency, and that facilities for getting coal and coke—getting coal into these stations, is poor, expensive, that they are not good emergency propositions.

31661 Q. You say you would not have started them up and used them during the present winter?

A. I said what?

Q. Would you say you would not have started them up and used them during the present winter?

A. With conditions exactly as they are?

Q. As they are.

A. Well, I do not know. I told you I did not have that data. I do not believe, however, that if they were necessary this winter other capacity should have been secured at some other point where the gas could have been made more economically.

Q. How about December of 1917 and January of

31662 1918, would you not have fired them up then; don't you know they were needed then?

A. I believe that the company could have gotten along very well without them then.

Q. Do you believe they could have gone along without them this winter?

A. I did not say any such thing. I said I did not have the data.

Mr. Chambers: He said that a number of times.

Q. Would you be willing to say that it was poor operating judgment to fire up these plants in Novem-

ber and December and make gas in them during the cold weather?

The Master: Of what year?

Mr. Ransom: Of this year.

The Master: You have asked him that several times.

Q. (Continued.) Changing the makeup of one or more water gas plants to meet the variances in demand during the winter?

The Master: What is your question now?

Mr. Ransom: Whether that is poor operating judgment. 31664

The Master: To do what?

Mr. Ransom: To fire them up and make gas in them during the cold weather to accommodate the variances in demand to the water gas plants.

A. When was this?

Q. This winter and other winters.

A. I would say yes, that it is, because of the fact that at very small additional expense additional capacity and water gas could be secured and coal gas could be manufactured much more cheaply, and you would have it much more flexible, that would not take that terrific expense for starting it up. And you must consider the tremendous investment represented by plants 31665
of this type; covering the space that they occupy, three machines in any plant, three water gas machines, would be much more valuable in my opinion, and the cost of those three machines would be very small in comparison even with the cost of the land, as I look at it. Without knowing anything about land values even, but from the testimony I have read in this case, it would be almost prohibitive to think of carrying those reserve plants for reserve capacity just for a few days during the winter.

Q. What would you do with the investment in these plants?

A. In my opinion—

Mr. O'Brien: Just a minute, your Honor, I am going to object to that.

The Master: Go ahead.

A. In my opinion these plants, for the purposes of this case, or for the purposes of investment, should be written off and done away with.

Q. And a new plant put in their place?

A. I don't know that a new plant should be put in
31667 their place, no. If it is necessary, additional capacity should be put in elsewhere.

By the Master:

Q. Where?

A. Well, at some of the plants of the system companies.

Q. Which one?

A. Astoria possibly. I have made no particular study of that.

Q. Put in another unit you mean?

A. Put in some more water gas, or additional coal gas plants.

Q. Another unit you mean?

31668 A. Yes, unit, or part of unit. The units there are very large.

Q. You could have a small unit, couldn't you?

A. I was thinking of the way they consider units in that place—a half unit.

By Mr. Ransom:

Q. How would you dispose of the investment which this company has in these two plants?

A. In my mind that should be retired as depreciated.

Q. What would become of the investment?

A. It has absolutely depreciated in my mind, so

far as the investment in the tangible property of these plants is concerned, not considering the land.

Q. How would you build a new plant, where would you get the money?

A. Well, that has got to be quite a proposition; I don't know that you would have to build a new plant.

Q. Don't you know that the company has to have either the plant capacity of these 14th and 42nd Street plants, or their equivalent and more?

A. Now?

Q. Yes. 31670

A. No. I told you that I did not have that impression.

Q. You think the Consolidated Gas Company should have a reserve manufacturing plant capacity of at least five per cent over its maximum daily send-out?

A. That is what I stated, yes.

Q. Would you consider anything less than five per cent safe?

A. No, I should say it should be kept up around that.

Q. Above that?

A. Well, you can't keep it exactly that, but very close to that point I would say. 31671

Q. It should be at least that as a minimum?

A. I should say it ought to be five per cent.

Q. Are you willing as the expert adviser of the Attorney General to express the opinion to the officers of this company and to this Court that a five per cent reserve is a safe and adequate provision in this city?

A. Five per cent reserve over the maximum for one day.

Q. The maximum day?

A. Yes.

Q. Now, what reserve do you think the Consolidated Gas Company had in 1919 and 1920?

A. I certainly would not think of that; I haven't got the data.

Q. Have you any idea about it?

A. I have not got the data.

Q. Have you made any effort to get it?

A. I have not studied 1919, as before stated.

Q. You have expressed the opinion here that these plants were not necessary on this five per cent reserve basis because in 1918 your peculiar method of calcula-
31673 tion showed a reserve of how much?

Mr. Chambers: I object to that, "peculiar method of calculation."

Q. 1918?

Mr. Chambers: I don't think that is a fair question.

Q. Well, this method of calculation shown in Table 153, which you said you approved of.

A. This Table 153, Defendants' Exhibit AA138, shows an excess of manufacturing capacity over the total of maximum makes of each station of 7,492 M cubic feet, considering the data from which this table is taken and excluding from the manufacturing ca-
31674 pacity the Northern Union Gas Company's plant which has never been used during the period from 1906 to 1918, and the New York & Queens Gas Company plant and the Consolidated Gas Company's plant at 14th Street and 42nd Street; but I desire to call your attention to the fact that in making this computation manufacturing capacities have been taken as nominal manufacturing capacities reported to the Public Service Commission. Glancing at the—

Q. Which is it, plant capacity or generating capacity?

Mr. Chambers: Just a minute. I submit you should let him finish his answer.

A. It is generating capacity or manufacturing capacity, whichever your report is.

Q. Do you know which it is?

A. I don't remember the words they used.

Q. Well, you recognize the difference between plant capacity and generating capacity, don't you?

A. I don't know what your term would mean by that.

Q. What would your term mean?

A. You would have to define that to get what you want. Usually the machines are rated nominally—

Mr. Chambers: Mr. Hine was answering a 31676
question and had not finished.

The Master: I thought he had finished.

The Witness: I had not.

The Master: Go ahead.

A. The manufacturing capacity of the East 21st Street station as shown by Defendants' Exhibit AA-132 was 28,500 M cubic feet in 1918, while Defendants' Exhibit AA-138 shows that the maximum make at the 21st Street station was 32,343 M cubic feet in 1918, or considerably in excess of the reported manufacturing capacity. The same is true of other companies.

Q. In this Table 153, Defendants' Exhibit AA-138 31677
you show a very sharp decrease in the excess of manufacturing capacity from the total of maximum makes of each station from 1906 down to 1918, which is as far as you went?

A. Yes.

Q. For example, a drop from 32,918 in 1916 to 8,729 in 1917; and a further drop into 1918?

A. Yes, sir.

Q. Have you any idea how much the drop is into 1919?

A. No, I haven't got the data.

Q. Under your theory that a five per cent reserve is enough, supposing that in 1918 and in 1919 or 1920 there came another seventy-five per cent drop such as there was in 1916, where would the company be, and where would the consumers who must have gas be?

A. Another seventy-five per cent?

Q. Seventy-five per cent drop in reserve?

A. I would say this, that certainly this company cannot get along forever with the plant that it now has; but irrespective of that fact I do not believe that it can afford reasonably to keep the 14th Street and
31679 the 42nd Street plants and operate them. They are too expensive, they are depreciated, they are not modern.

Q. But the company nevertheless has to have them—do you dispute that?

The Master: I understand Mr. Hine to say that in his opinion it would be better operating judgment to sell those plants and use the money to put up another unit at Astoria. That is it, Mr. Hine?

The Witness: Get rid of them. They are no good. They will have to find the money somewhere, and certainly the land that is there
31680 will build that amount of capacity at Astoria, or more.

Q. That is a matter of the future, but as to the past the figures show that the company actually had to have them. That doesn't show past lack of necessity?

A. In my opinion for years those plants have not been what you could call reasonably useful or necessary.

Q. Take the present situation this Table 153, Defendants' Exhibit AA-138, shows a manufacturing capacity of a thousand cubic feet for twenty-four

hours, leaving out the 14th and 42nd Street plants, of 161,300. Have you learned that on December 18, 1919, the total make of the Consolidated system was 164,462,000 cubic feet, and the total required send-out to consumers on that day was 160,327,000 cubic feet?

A. No.

Q. You didn't know anything about that?

A. I believe I read that in the newspaper.

Q. You got various information from Dr. Weber about this matter. Didn't you get that information?

A. No, I believe something was mentioned to me 31682
about it, but I don't remember seeing the figures.

Q. Did you ever see these letters (showing letters to witness) embodying information which the company furnished to Dr. Weber upon his request on this subject, originals or copies?

A. I don't remember, no. He may have had them in his hand when we were speaking about this, but I didn't get into that.

Q. Were you not furnished with that information?

A. I was not, no.

Q. You didn't know anything about it?

A. I said I believed he mentioned it to me.

By the Master:

Q. Does that change your judgment as to the 31683
advisability of keeping these plants?

A. It does not.

Q. Why not?

A. Because, as I have stated, irrespective of those requirements, the additional capacity that certainly will be needed in the future should be provided elsewhere.

Q. Well, it is needed now, isn't it?

A. Well, that does not change my idea as to the reasonableness of this procedure.

Q. No, but you admit that they do need a reserve capacity now, and if they did not have this 14th Street and this 42nd Street plant they would have to have it somewhere else?

A. If the send-out is what these figures show.

Q. They would have to have other capacities?

A. I think so, yes.

By Mr. Ransom:

Q. Take January 5, 1920, did you learn that on that day, although under your basis of computing the matter the company had a manufacturing capacity
31685 in thousand cubic feet for twenty-four hours, aside from the 14th Street and 42nd Street plants of 161,300, that the company had to make on that day 165,415,000 cubic feet, and had to send out to consumers approximately 160,000,000 cubic feet?

A. I did not, but I have no doubt that the system companies could make that amount without using the 14th and 42nd Street plants.

Q. What becomes of that five per cent reserve, figured in the manner you have indicated? Do you think the company has a five per cent reserve today?

A. If those figures you give are correct, no.

Q. It hasn't any reserve?

31686 A. Well, I don't know as to that.

Q. Because their make and send-out is in excess—

A. Of this nominal rated capacity as reported, but that capacity is not the maximum capacity of these stations on one day, as shown on these tables. They made more than they reported as their total capacity for twenty-four hours.

Q. Do you think that all the machines in all the plants of the company can operate continuously twenty-four hours a day, day in and day out?

A. I know they can't, and I know that those max-

imum send-outs do not come along continuously day after day for twenty-four hours, either.

Q. They often extend over considerable periods of time.

A. Usually you will get a maximum day—during the conditions that existed in 1918, I believe there were very exceptional conditions then, because of the shortage of fuel and the cold weather.

Q. Take right at the present time, right along these January days, do you think this company has any reserve?

A. Some days they do. The send out will vary 31688
from day to day. Some days it has and some days it has not.

Q. Well, yesterday or today?

A. I cannot say, I haven't got the data. If there are a few days that do not run up to the maximum sprinkled in with the others they can get along very well.

Q. How?

A. Well, there is a holder capacity which amounts to in the neighborhood of a day's sale, eight-tenths or nine-tenths of a day's sale. Taking that into account, and the fact that you can push these machines above their normal rated capacity, if you don't have 31689
too many fat days all at once you can get along.

Q. Take yesterday, do you know what the send out was yesterday?

A. I don't know what the send out was on any of these days.

Q. One hundred and sixty million yesterday—

The Master: Judge Ransom, I don't believe that I ever got the point clear in mind, and I would like to get it clear now. You recall that when I was over at Astoria I asked whether the company benefited in any form in keeping these

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plants among their assets by reason of invested capital, or something of that sort. There is a good deal of argument around the circle here, and I would like to get it right, and to get it right now, if I can. I would like to hear from the defendants upon the point as to whether, leaving aside the questions of judgments and economy of operation, whether you know of any other reason that might lead the Gas Company to keep these plants among their assets and not withdraw them.

Mr. Chambers: Yes.

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The Master: What is it?

Mr. Chambers: They hang on to them until this rate case is over; I think that one purpose for doing that is to swell up and enhance—

The Master: The invested capital for the rate base. That is the only reason you know?

Mr. Chambers: They are a couple of white elephants or dead horses. With this data they ought to have foreseen years ago that they needed some up-to-date gas making units for reserve, and that they needed reserve. We have shown by this table that if they had looked in the looking glass they would have seen staring them in the face the fact that they needed some additional

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units perhaps, but not to carry those valuable pieces of real property with old, antiquated improvement on them which Mr. Hine says are depreciated to zero.

The Master: Well, you haven't given me anything new. I myself suggested that that might be a reason.

Mr. Chambers: Well, isn't it fair to say—

The Master: I don't know. I am going to hear Judge Ransom.

Mr. Chambers: I can't think of any other reason.

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Mr. Clark: There is one other aspect to this situation—

The Master: That occurred to me, whether it was possible that this company was deliberately keeping these plants for the purpose of making a higher investment for the rate base.

Mr. Chambers: Think of the opportunity they have now of disposing of that real property and taking enormous profit on the land.

The Master: I will hear what Maj. Clark had to say.

Mr. Clark: That is about what I was going to say. Water front properties in the course of 31694
time will undoubtedly be taken by the City, and under the rules they follow in their accounting any profit on that land is a profit that they can put in their pockets. As it increases they are making money.

The Master: Couldn't they sell the property now, and take the profit in the same way as if the City took it?

Mr. Clark: They would not get as much as if the City took it.

The Master: They might get more.

Mr. Clark: I think they will sell it perhaps, as soon as this rate case is over.

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The Master: You, as well as Mr. Chambers think they are keeping it in order to make a higher rate base?

Mr. Clark : Yes.

The Master: What do you say about it, Mr Ransom?

Mr. Ransom: There are two situations—

The Master: The only point I want to direct your attention to, not that by what I have said I have reached any conclusion about it, but I have

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been wondering whether it was a question that I had to consider upon the question of the good faith in keeping them.

Mr. Ransom: Here is the situation as I take it as to these plants; Certainly under Mr. Hine's testimony—

The Master: No, you are getting away from it. What I want to know is this, is it not a fact that so long as these plants are kept in it increases the investment on which the rate is based?

Mr. Ransom: Well, but the situation as to that—

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The Master: Isn't that so?

Mr. Ransom: Let me point out—

The Master: Isn't that so?

Mr. Ransom: As long as that investment is in those plants, and until those plants have been written off under the uniform system of accounts as plant withdrawn from service, and charged as operating expenses, provided for as operating expenses, those plants and the investment in them is a part of that on which the company would be entitled at the hands of this Court to be vouchsafed a fair return.

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The Master: Can't you answer a question either? It is the fact, isn't it, that at this time, with those plants in, taking them at the investment that went into them, they are that much more upon which to base a rate? If these plants were not there would probably be less than with those plants in?

Mr. Ransom: Surely, there isn't any doubt about that.

Mr. Chambers: And the operating expenses to make the gas there costs more. It is not so much that it increases the rate base, but another very important element is that operating cost. It swells the cost of making gas.

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The Master: I don't care about that. Here is the picture. The gas company has these plants, they say we need them—

Mr. Ransom: We have got to have them, we are up against the wall even with them.

The Master: I thought I was talking. They say, "We need them as a part of our reserve; it is quite true we don't need them in the summer time, but as soon as the cold weather comes along we need them to take care of our demands." The State comes along and says, "That is a lot of nonsense, you don't need them at all, you have plenty of capacity somewhere else; you are only 31700 keeping them in, in order to increase the rate base." Now, somewhere or somehow I have got to weigh this evidence. If it is the fact that by keeping these in it increases the rate base, there is an element that I have got to consider as bearing upon all the probabilities. The result of my thought may be that I may reach a conclusion that that is not the reason that the gas company keeps them in; that that is not in their minds at all, that that is simply an incident to the result that they reach. On the other hand, I might find, after I consider that, and if I am right that it does make a difference, and if I 31701 reach the conclusion that these plants are not necessary, it might bear very heavily in my weighing of the testimony.

Mr. Ransom: On the question as to which would be more to the interest of the company, I submit that it would be more to the interest of the company if this company needed to do any such thing, the easiest way that I can imagine of swelling these operating expenses for this year and for the years to come, would be to treat these plants as plants withdrawn from service.

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I don't care whether you put this property in the rate base, or whether you put it in operating expenses.

The Master: Now, you are getting back to what you said the day I was over in Astoria, precisely, and that is just what I wanted to draw out and see if I could get it clear. When I brought up the question over in Astoria, you said in substance what you have said now, that it is not to the interest of the company so much to keep these in as invested capital as it would be to start writing them off. That I could not get clear then, and I have

31703 not got it clear yet.

Mr. Ransom: Under the uniform system of accounts, under the rulings which have been made by the Public Service Commission, sustained by the courts, under the rulings of the Supreme Court of the United States in cases where this matter has been presented, I do not think there can be any possible doubt that plant withdrawn from service should be treated and must be treated just in the manner in which the Commission has prescribed it should be treated, namely, written off against that account—

The Master: Against which account?

31704 Mr. Ransom: There is a provision made over the years to be charged off—

Mr. Chambers: Which account?

Mr. Ransom: Plant withdrawn from service.

The Master: I cannot understand in which account you would write it off.

Mr. Ransom: It is written off as plant withdrawn from service, renewals and replacements, the loss on plant withdrawn from service under the uniform system of accounts.

The Master: Renewals and replacements?

Mr. Ransom: Yes.

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The Master: That is not plant withdrawn from service account, is it?

Mr. Ransom: Yes.

The Master: Plant withdrawn from service goes into renewals and replacements?

Mr. Ransom: Charged to that account, surely.

Mr. Clark: In 1906 they set up ten cents a thousand cubic feet reserve. One of their reasons why they set that up and got that eleven million dollars was that they expected to move their plants to Astoria, and that that would be their loss on it. Now, they have this eleven million dollars in their pockets which was set up for that very 31706
purpose, and which would take care of those plants when they were removed. The thing has already been taken out of our operating expenses, and does not affect future operations at all.

Mr. Chambers: Do you recall that Mr. Carter testified before the Hughes investigating committee, I think it was Mr. Carter, it is in the evidence here, that they were going to abandon all these plants here in the City, said they intended to do that and make the gas over there. Now, for some reason or other, whether they had this case in mind—I submit that is a fair inference—they have not done that. They have kept all these 31707
old plants here and asks this Court to give them a return on them.

Mr. Ransom: There is no way in which investments can come out except by being written off at what it stands on the books for, charged to this account. Now, there is this controversy with the Commission on the name of the account, whether it should be what the company calls it, or whether it should be accrued amortization capital, but the principle is the same. The effect is the same, and the Commissioners have ruled repeatedly on this

question, and there will not be a claim made here, I believe, by any one of these defendants that under the authorities plant withdrawn from service must be charged to that account or must be provided for suitably over some period in operating expenses.

The Master: Go ahead with the cross-examination.

Q. Now, this figure that you gave, you said this company had a holder capacity of eight-tenths of its daily send-out to consumers?

31709 A. This company?

Q. Or the system?

A. Approximately.

Q. What do you figure the holder capacity to be?

A. The data which I have shown on the table, Exhibit AA-124, shows a holder capacity reported to the Commission of 120,351,000 cubic feet.

Q. And that is the holder capacity you have in mind in saying they have a holder capacity—

A. I had not finished. It should be noted that that includes relief holders, and that relief holders form just as much a reserve as any of the other holders, they can be filled up, they are filled up, and the gas can

31710 be taken out in case of emergency and put into the other holders after it passes through the purifiers.

By the Master:

Q. They are using them day in and day out?

A. Day in and day out the water gas comes from these machines and goes into the relief holders, and is pumped from the relief holders through the purification holder.

Q. The relief holder is part of the process of making the gas before it is a finished product, isn't it?

A. It is.

Q. How can you include that in storage capacity, when you have to make your gas before you can store it?

A. Because the gas is all made before it goes into them.

Q. I won't follow you on that.

Mr. O'Brien: Don't get excited on that. You are setting up your judgment on that against the judgment of an engineer.

The Master: You can't store something as a manufactured product until it is finished.

Mr. Chambers: It is finished. 31712

The Master: It is not finished.

Mr. Chambers: Will the Master keep his mind open on that?

By Mr. Ransom:

Q. Does not the gas contain sulphur?

A. Yes, sir.

Q. It would be violating the law to send it out on to the district?

A. Not to take it from the relief holder and send it through the purifiers and then on to the district.

Q. Mr. Hine, even taking your figure of 120,000,000, which includes these nine relief holders, you haven't got eight-tenths of a day's send-out when the send- 31713
out runs in excess of 160,000,000, assuming your holders were full?

The Master: Have you?

A. Approximately that, as I figure it.

Mr. Clark: Seventy-five per cent.

The Master: That is only of one day.

Q. Don't you know, Mr. Hine, that for example in the early evening following the heavy use of gas late in the afternoon and early evening for cooking and industrial purposes, that holders which have been filled up in the afternoon become, let us say, approximately half empty before they start filling up for the night?

A. Oh, yes. There is a period of heavy demand there that the holders take care of the demand. You would not propose to have a manufacturing plant, I never heard of such a thing, that would take care of the demand over the hours of peak load. That is the only reason you need the holders, to take these varying demands through the day.

Q. In figuring that five per cent was sufficient reserve, did you take into account the great increase in the use of gas which has taken place from 1918 into 1919, and from 1919 into 1920?

31715 A. I have had no data on 1919 and 1920.

The Master: He has answered that.

Q. Assuming for example that the consumption of gas in December, 1919, was twenty per cent over the consumption in the previous year, on which your calculation was based, and twelve per cent over any previous year, would you still think that your five per cent based on 1918 was a sufficient reserve for the present and the future?

A. Did you say that that twenty-one per cent was for the month of December?

Q. Yes.

A. Well, I don't think that would have any special

31716 effect. It would depend on how your maximum days came in there. You would have to have other data.

Q. Would the fact that a day as heavy as that which I have described came in December rather than in January and February, in which the heavy days hitherto have come, have any effect on your judgment?

A. No, I would say you need that much.

By the Master:

Q. What in cubic feet of gas do you figure the reserve ought to be, rather than in percentage? I don't get a clear picture of what you think they ought to have. How many cubic feet capacity in excess of what

they have, excluding Fourteenth Street and Forty-second Street, do you think they ought to have—twenty million a day.

A. You would have to take the year. You would take the basis of send-out—

Q. Well, you say five per cent reserve?

A. Five per cent over the maximum day.

Q. Well, you have an idea of the capacity of these plants?

A. Say roughly 150,000,000 as a maximum day. You would need five per cent over that.

Q. Judge Ransom indicates that they run around 31718
160,000,000.

Mr. Ransom: 160,000,000 to 165,000,000.

A. Then it would be that which you would have five per cent on.

Q. Well, take 165,000,000 let us say, what reserve do you think the company should have?

The Master: In plant capacity?

A. 8,250,000 cubic feet for twenty-four hours maximum capacity.

The Master: You would not say that ten million was very far out of the way, would you?

The Witness: No, I would say this, that in building, as your send-out went up, and as you are 31719
building reserve plants you would not build for just one year; that would be absurd.

The Master: Let us take it at ten million. Would you put up a water gas plant or a coal gas plant?

The Witness: Well, that would require very special study of the situation.

The Master: Well, it is something that somebody has got to determine. I have heard some evidence here that water gas plants are not economical because oil costs are high, and that coal

gas plants are not economical because coal costs so much, and some evidence that indicated that they ought to have more coal gas, and that they should switch from one to the other. What do you say the plant should be to take up that reserve, coal or oil?

A. Well, I would not be prepared under the circumstances that exist here to say. I have not figured on that and could not answer that question without some figures. I cannot compare the cost under the conditions that exist today, with the space that would
31721 be given that and the quality of the gas you have got to deliver.

Q. Yes, but how about the future? Can you give me the cost of the oil—the direction the price of oil is going to take?

A. You have got to consider that as well as you can get at it. In the cost of the coal I would say generally speaking that coal gas in the future, like the coal gas plants or the by-product oven plants, should certainly be put in to a very considerable extent. We will, of course, always have some water gas to take up the variances of the supply. Of course the capacity of the coal gas plant is not susceptible
31722 of taking up all the variances.

Q. Suppose the gas company today concluded to adopt your suggestion and you put in a 10,000,000 capacity plant, either coal or water gas, in Astoria, how much money would they have to put into the plant as an investment?

A. I could not say that either.

Q. Can you give me any idea at all? In other words, what I would like to know is, would it cost a million dollars to put up a 10,000,000 foot plant?

A. Oh, a great deal in excess of that.

Q. In excess of it?

A. Yes.

Q. How much in excess of that?

A. I am not prepared now to make anything much more than a guess on that proposition.

Q. Well, give me your best guess on that.

A. I would make a minimum guess on that, for a 10,000,000 foot coal gas and by-product oven plant —the cost would probably be somewhere between three to five million dollars.

Q. What is the capacity of 14th Street and 42nd Street plants today? 31724

A. 9,500,000, as reported.

Q. 9,500,000?

A. 9,500,000 cubic feet for 24 hours.

Q. So that your testimony, in substance, is that instead of having this 9,500,000 capacity at 14th Street and 42nd Street you ought to have a modern pla is that the idea?

Mr. Ransom: Or more?

The Master: Well, he said eight and a half and I took ten, and you are getting around nine or nine and a half million. We are pretty close, are we not, generally speaking?

The Witness: Yes, sir. I think you interpreted me as saying a little more on this basis that we would figure. I put in ten. 31725

Q. No, I say ten would not shock you at all. I am taking half a million off and I get precisely what the 14th Street and 42nd Street plants produce. Then if ten million would not be so excessively shocking, surely nine and a half would not?

A. No.

Q. You say to produce nine and a half million they would have to put out three to five million dollars?

A. Yes, that is my guess.

Q. Do you know what the investment is in 14th Street and 42nd Street?

A. I have not got those figures.

Q. Suppose it is less than five million dollars, would you say that is good judgment?

A. I most certainly would.

Q. Suppose it is two or two and a half million?

Mr. Chambers: We say that should have been long ago. Mr. Hine was speaking of the cost today of a coke oven plant, not of 1906.

The Master: I know your argument.

31727 Mr. Chambers: Do you see my point?

The Master: I am trying to indicate where it leads us. It leads us nowhere.

A. There is this factor, that the modern plant would produce gas so much more cheaper than these plants would, that you take care of that factor.

Mr. Chambers: How much more cheaper?

The Witness: I am not prepared to give figures on that.

Q. Let me ask you this: You say a plant costs from three to five million dollars to put up today, which would produce nine and a half to ten million feet a day. That is a fair basis on which to figure what

31728 manufacturing capacity should be represented in plant investment?

A. No, I told you those figures were very, very rough, and that is the coal gas plant. A water gas plant is entirely different. The investment in the coal gas plant is very high.

The Master: Go ahead.

By Mr. Ransom:

Q. Are you willing to say it is not better and more economical policy to keep these present plants, use them for the months of the winter they are required, than it would be to scrap them and build an entirely

new plant which would not be required during the summer?

The Master: I do not see why you are spending much time on this. The witness in substance said that instead of the 14th Street and 42nd Street plants he would want the same capacity somewhere else. What is the use of wasting time on it. The only point is whether it would be more economical operation to have a more modern plant; but the witness said whether it is five per cent or some other percentage, if these two plants were discarded he should expect you 31730
to have plant capacity of equal amount to take its place.

The Witness: But I think there is one thing there that I must say: That applies to the present time, assuming these kind of sales they are having today, not in the prior years. In the prior years that certainly was not necessary.

The Master: I am talking about the present; I am not talking about ancient history and am not going into ancient history.

Mr. O'Brien: You call them units; and he did not assent to the term you used, that it would be added to one of the other plants. 31731

The Master: That is what I am talking about. He said it would cost three to five million dollars to do that.

Mr. O'Brien: No, he did not.

Mr. Chambers: You have your water gas units in one of the other plants.

By the Master:

Q. You would have to put up another building for the water gas units, would you not?

A. Yes, but a water gas plant for a million cubic feet does not cost anything like a coal gas plant.

Q. How much would a water gas plant cost? I asked you to pick out what plant you wanted.

A. But you have to figure not only the cost of the investment but the cost of production in the last analysis.

By Mr. Ransom:

Q. Do you agree with Mr. Woods that this company ought to have a reserve?

The Master: I am not going to decide on theories of operating a plant.

Mr. O'Brien: Well, do you mean by that
31733 your mind is made up on this proposition?

The Master: Oh, no.

Mr. O'Brien: That you will not take the judgment of some expert where there is a man on the job like Woods?

The Master: As between equally balanced judgments, unless there is something that throws the scale heavily one way or another, I am not going to decide who is right on a question of operating judgment; no, sir. Unless I can find bad faith somewhere, or a reason which does not fit in with the facts here, I am not going to disturb the judgment of the operating officials. I
31734 have got to find bad faith.

Mr. O'Brien: The burden of proof is on the defendants, your Honor.

The Master: Not necessarily. The burden is on them to show good faith.

Mr. O'Brien: Oh, no.

The Master: But unless bad faith is shown I will not disturb it.

Mr. O'Brien: You have a twisted view of the law in rate cases, if that is your view of the law, and I take an exception to it if you are pronouncing it now.

31735

The Master: That is the way my mind runs on that.

Mr. O'Brien: Why, the burden of proof is on the complainant. The statute does not say that you must make gas by the water gas method or the coal gas method or the coke oven method, natural gas or any other kind of gas; but it says the gas must be sold for 80 cents.

The Master: But I can see, Mr. O'Brien, from what has been testified to in this case, that the operating officials of a gas company have some very serious problems staring them in the face all the time.

31736

Mr. O'Brien: Every little town has got its gas works and has the same problem. Of course, if an earthquake comes we will all be snuffed out. So with the gas plant.

The Master: You do not know what I am talking about.

Mr. O'Brien: I know what is in your mind.

The Master: No.

Mr. O'Brien: You want to give to New York something that no other town has got.

The Master: When they go to extend their plant they have the question "Shall we extend it on the coal gas or water gas system"? They say: "If we extend it on the water gas, with the tremendous demands now for oil and plant and machinery, we may find ourselves in a very awkward position so far as oil is concerned, and the price on it, and the great use of oil may so affect the use of coal that coal prices will be way down, and then we will be sorry we did not have the coal gas plant."

31737

If they take the other view of it and say "perhaps we had better stick to our coal gas," and the situation arises where they have a tremendous

31738 influx of oil and the oil price goes way down, then they will say: "We were foolish to tie ourselves up to coal gas plants."

Those are problems that require careful judgment for determination. As between the operating officials on their judgments, honestly arrived at and not with some ulterior purpose, and the judgment of Mr. Hine or any other expert, I would not disturb them on a matter of judgment.

Mr. Clark: It is a question of their speculation.

31739 The Master: I would not decide as an outsider, knowing nothing about the problems except that I hear in the testimony, that Mr. Hine knows more about it than Mr. Woods or Mr. Woods knows more about it than Mr. Hine. I shall assume they have an equal ability. And so if I find good faith, I say I would just as leave take Mr. Woods as Mr. Hine.

Mr. O'Brien: Well, you artfully put that, your Honor.

The Master: I did not mean to be artful.

Mr. O'Brien: It was quite artful.

The Master: Well, I did not mean to be.

31740 Mr. O'Brien: What you mean is that if an expert who has not made gas in this company comes along and says that they ought to make it a different way, they do not need this old antediluvian junk at 14th Street and 42nd Street, under the guise or camouflage of a reserve—if someone comes along and says that, says they have got sufficient storage capacity and what they need to do is to put in a few more gas making machines in the plants they have, to give them what they need for reserve, that you are going to assume in the absence of someone proving

Woods' bad faith, or the men who control the company are acting for some ulterior purpose, that they have made their case out? It does not meet the burden placed upon the complainant. They are in here with the same burdens an attorney has in a murder case: They have to prove it beyond a reasonable doubt. It goes to the method, the economy and efficiency of their work.

The Master: Let us get through with the proof.

Mr. O'Brien: I register my exception now to the views expressed by your Honor. 31742

By Mr. Ransom:

Q. Mr. Hine, do you think that a company does not need a reserve equal to the capacity of its largest plant?

A. No, I am of the opinion that under the conditions that exist in New York City, with the plants distributed as they are, with the interconnections that you have, you do not need a reserve equal to the entire capacity of the largest plant over the maximum day.

Q. Don't you recognize that there is danger that plants, large plants, may go entirely out of service through accident at the times of the year when these 31743
maximum demands come, and stay out of service unavoidably for a long period of time?

A. I should say that a plant—the plants are and should be constructed so that anything except a most very unusual accident would not shut down that entire plant.

Q. Don't you know that those things do occur and have occurred?

A. I have heard of it.

Q. Large plants out of service through explosion of some sort, for long periods of time during these

winter months, when these maximum demands occur?

A. Gas plants?

Q. Yes.

A. No, I do not recollect any now.

Q. Did you ever hear that the entire plant at 21st Street was out of service through accident in December for a week or more?

A. When?

Q. In 1898?

A. No, I don't believe I have heard it.

31745 Q. Did you ever hear that the entire 44th Street plant had to stop making gas through a blast explosion in the generator house and was out of service for several days?

A. I believe I have heard of that.

Q. In 1908?

A. I do not know when it was, but I have heard of those blast explosions completely wrecking a blast line, and when they needed to use the plant they have made the various repairs and gotten that in operation very quickly. You do not need to work so fast. The explosion does not tie it up—one blast.

Q. Don't you realize that one explosion might put

31746 the whole plant out of commission?

A. Well, I can conceive of an explosion or an earthquake where the entire City of New York might be put out of commission.

Q. No, in the plant.

A. Yes, I can imagine an explosion in the plant which would entirely wreck it forever.

Q. And that is one of the contingencies that have got to be taken into account in determining what reserve a company has to have?

A. I do not think so. That is too far-fetched in my mind.

Q. Did you ever know anything about the time that the Central Union's plant had an explosion and a fire starting from the exhauster house, with four buildings burned, so that the whole plant was out of service so far as gas making was concerned, for several weeks?

A. No, I do not recollect that.

Q. In the month of February. Did you ever hear anything about that?

A. No, sir, I do not know; I do not remember.

Q. Your duties in the Public Service Commission or since never led you to investigate such matters?

A. I have heard such things; but I never heard of 31748
that, that I remember.

Q. Did you ever hear when the entire New York Mutual plant was put out of business so far as making gas was concerned, by an explosion and resulting fire, so that it was necessarily out of service for a number of days, in the month of December, at the time when the demand of the consumers is so heavy?

A. Not that I remember.

Q. And yet in the light of facts like those—

Mr. O'Brien: Wait a minute, they are not any facts; they are not in this case. They are assumptions. Ransom is on the witness stand again. I object to it. 31749

Mr. Ransom: Well, some of them he has heard of.

Q. Did you consider any such facts as those in reaching your conclusion?

Mr. O'Brien: I object to it because there is no showing in this case that these are facts. So far as we know they are dreams.

Mr. Ransom: Let me complete my question.

Mr. Chambers: I think they are the hallucinations of Mr. Ransom. He has them occasionally.

Q. Well, did you consider any such matters in determining that a five per cent reserve was enough and that the company did not need to have a reserve equal to the capacity of its largest or larger class?

Mr. O'Brien: Same objection.

The Master: Same ruling.

Mr. O'Brien: Exception.

A. Yes, sir, I have considered plants that have been down for a greater or less period and have had explosions which have interrupted their operation, and all of these factors, yes.

31751 Q. On your five per cent reserve basis, where would the consumers of this city be, of this system, if there was any such mishap in one of these larger plants during months like December, January and February of 1919 and 1920?

A. Well, some of those mishaps would not be anything. Which mishap do you mean? If the largest plant was completely destroyed and could not supply gas for three or four weeks I would probably say that the gas would go off in the City of New York. I cannot conceive of that, however, except in the most remote contingency.

Q. What?

31752 A. I can only conceive of that in the most remote contingency, in a properly designed plant.

Q. But it is a thing which is possible and does happen?

A. I say an earthquake may take away all New York.

Q. No, but explosions and fires?

A. It is something exceptional, though, to wreck that entirely. I do not know how it could happen in a gas plant—not to wreck the entire plant.

By the Master:

Q. Does the manufacture of gas require considerable care?

A. It does.

Q. And considerable care to avoid explosion?

A. Yes, you have got to be careful.

Q. And a careless employee might blow up a plant any time, might he not?

A. A careless employee might cause an explosion, but I do not think he would blow up the entire plant.

Q. But nobody can tell what the result would be?

A. No, but I do not think it is possible to blow up 31754
the entire plant.

Q. Nothing is impossible, though. Suppose a fire started with a heavy wind on a winter night, blowing sixty or seventy miles an hour, with the water pipes frozen and no water. You would see some destruction?

A. Yes.

Mr. Chambers: Why not have these companies have an entire duplicate of their plant to await such an explosion?

The Master: When I am Public Service Commissioner I will fix these things all up; just now I am just deciding the confiscatory rate. 31755

Mr. Chambers: You have to use a little horse sense as to conditions you have to take care of.

The Master: That is what I am trying to do.

Mr. Chambers: The whole plant might blow up. You cannot expect these consumers to carry a duplicate plant of this whole system.

The Master: I am not deciding that one way or the other, but I know that once the witness states that it is a dangerous operation, with the possibility of an explosion by reason of the care-

lessness of an emloyee, that most anything might happen and reasonable precautions must be taken. That is my view of it.

Mr. Chambers: That is, reasonable precaution must be taken with regard to the employee who might blow up the plant.

The Master: Yes, and with the kind of carelessness that we have now-a-days around town most anything might happen.

Mr. Chambers: I would suggest they are even in the legislature.

31757 The Master: Yes.

By Mr. Ransom:

Q. Mr. Hine, you spoke of figures running one hundred and fifty to one hundred and sixty millions make or send-out as though they were something abnormal. Did you ascertain, for example, that for January 2, 3, 4, 5 and 6 of 1920, the make ran on the average more than 150,000,000 a day?

A. I told you I had no data on that.

Q. And that that was an increase on the average of more than 40,000,000 a day over the corresponding days of 1919?

A. The comparison of days with corresponding

31758 days of another year does not mean much, because periods of high consumption do not usually come on the same days of the month—that kind of consumption.

Q. Well, a comparison of twenty-one per cent increase on a whole month is a factor to take into account, is it not?

A. Yes, that is a factor, and also the increase over the maximum days of the preceding years is a factor that would be valuable.

Q. Do you think, then, that the Consolidated sys-

tem has any reserve at all at the present time, even operating at the 14th Street and 42nd Street plants?

A. I told you that I have not figured that.

Q. In 1916, according to your figures the plants of the system had twenty-seven per cent more capacity than was required; is that right?

The Master: That is Table No. 153?

Mr. Ransom: Yes.

The Master: That does not show that percentage; it just shows the quantity.

Mr. Ransom: I just want to see whether he has it. 31760

A. I have not calculated it.

Q. Well, isn't that about right when you calculate it?

A. I have not calculated it.

The Master: It is four-fifteenths, is it not?

The Witness (making computation): Might I get that question again?

Q. What per cent do you make it?

A. I have not got the percentage yet. I did not get the question.

Q. (Pending question read.) "In 1916, according to your figures, the plants of the system had 27 per cent more capacity than was required, is that right?" 31761 That is, 32,918 on 121,082?

A. Well, that five per cent when I came in, came away from that 32,918.

Q. Well, what figure do you make for 1916?

A. Well, as I figure it here, roughly it has got a capacity of about 18 1/2 per cent over the sum of the maximum day's manufacture at each of the stations.

Q. That is in 1916?

A. In 1916.

Q. How do you figure that?

A. I would like to check that figure, too.

Q. Do you want to look at the exhibt?

A. No, there is no specific data.

Q. How do you figure that?

A. Oh, I figure the percentage by dividing 32,918 by 121,082.

Q. And that gives you what?

A. As I have here, about 18 1/2.

Q. Why, it is more than that.

A. Yes, it must be more than that.

31763 Q. Twenty-seven, I think?

A. Yes, about twenty-seven.

Q. Twenty-seven is right, is it?

A. Those figures, that division gives twenty-seven.

Q. Do you say in 1916, a five per cent reserve would have been adequate?

A. For that particular year, yes.

Q. Well, how much did the maximum day's make or send-out increase in 1917?

A. Increase over 1916?

Q. Yes.

A. I have not got that figure, but from these tables which give a fairly comparative figure—

31764 Q. (Interposing.) It increased about 25 per cent, did it not?

A. About 20 per cent.

Q. Well, nearer twenty-five.

A. Nearer twenty; less than twenty.

Q. That is on make or send-out?

A. That is on that make; I have not got the send-out figures.

Q. Well, on send-out it is about twenty-five.

A. Well, I have not got those figures.

Q. So that in a single year almost all of this twenty-seven per cent reserve was absorbed by the increase in the maximum send-out?

A. Well, I don't think you can consider just one year on any of these things. Because of the fact that the send-out next year on the maximum days might be very materially lower than it was this year, does not mean anything especially. You have got to take care of your proposition as it grows, not just consider each year by itself.

Q. You have got to provide for the next year?

A. Oh, yes, surely you have got to provide for that.

Q. But supposing in this year 1916, instead of having 27 per cent capacity, you had had only five; where 31766
would you have been with a 25 per cent or more increase of send-out the following year?

A. I guess they would have had to scramble a little more to get through.

Q. And the consumers would have gone short?

A. I don't know that they would, sir. I have seen people get through worse messes than that.

Q. And you would favor having consumers scramble?

A. No, I did not say that. I say you cannot consider any particular year by itself. That would be foolish. You will note on Exhibit AA138 that in 1912, it was 132,000,000 and in 1915, it was 31767
109,000,000.

Mr. Ransom: I think that is all at this time.

RE-DIRECT EXAMINATION BY MR. CHAMBERS:

Q. The tables which are in evidence and which you have been talking about would indicate, would they not, in your judgment, that the complainant company should have foreseen long ago that it needed some, if any additional reserve was needed, and it needed it not now, but needed it years back.

A. Yes, I should say that should have been foreseen. Not so many years back, but it should have been foreseen as it developed.

Q. And they should have foreseen their growth, the annual growth?

A. To a reasonable extent, yes; undoubtedly did.

Q. When you answered the Master's questions and spoke of building a new coal plant or new units, you spoke of prices as of today?

A. I did.

Q. And it was your judgment that water gas units, or a water gas plant could be built much more cheaply than a coal gas plant, as the original investment?

A. Oh, yes.

31769 Q. The original cost?

The Master: Well, everybody agrees on that; Mr. Woods said that.

Q. But you have to consider in that connection the cost after the first investment, of making gas; that is important?

A. The cost of production, yes, including your repairs, maintenance and depreciation.

Q. It is not the practice, is it, generally, for companies, take in cities outside of New York, to have duplicate plants to take care of earthquakes and the like?

A. I don't believe so.

31770 Q. What is that?

A. I don't believe so, no.

Mr. Ransom: Just one thing, Mr. Hine—

By the Master:

Q. Well, I suppose that in the smaller towns it is perfectly feasible to have the size of the plant take care of the necessary repairs?

A. In a smaller place there is usually just one manufacturing plant.

Q. Well, they make it large enough to take care of the reserve requirements?

A. Oh, yes, of course.

Q. And they take their chances on a blowout of the plant?

A. Yes.

Q. They could not afford, in a small town, to have another reserve plant, which you could in a place like this?

A. Well, take St. Louis, a city of about 600,000; we had two plants when I was there. Either one of them could have handled the situation. But you had to make those plants so that there would be hardly any possibility of losing the whole thing. You might lose part of either one; that is, one coal gas house. 31772

Q. You did not have any such situation as we have in the City of New York?

A. No, but of course, here the plants are very large, too, and when you consider the large plants, while a unit might go down I can hardly conceive of an entire plant going down.

RE-CROSS EXAMINATION BY MR. RANSOM:

Q. Mr. Hine, is it not a fact that in Laclede while you were there the reserve was over thirty-three per cent?

A. I don't remember what the reserve was. It was a pretty good reserve.

Q. Is it not a fact that the manufacturing capacity 31773 was—

By the Master:

Q. Was there more than five per cent, Mr. Hine?

A. At times it was and at times it was not.

Q. I am talking about the times you are talking about?

A. That is when I was there.

Q. Over the peak load?

A. During the peak load, either in 1908 or 1909, they had to make more than they thought they could make to get by. Then they put in additional capacity, and finally had a much larger reserve than that.

By Mr. Ransom:

Q. Well, what were the figures?

A. I don't remember the figures now.

Q. Well, is it not a fact that the reported maximum day of this plant was fifteen thousand M, that is fifteen million cubic feet, and its manufacturing capacity twenty million cubic feet, or a reserve of thirty-three and a third per cent?

A. When?

Q. During the time that you were there?

A. Well, that changed a great deal while I was
31775 there. I do not know what was reported anyway, I am sure, and I do not have the figures in mind of their plant capacity.

By the Master:

Q. Then your recollection is it was a very substantial reserve?

A. Well, before they put in some improvements there they got down to no reserve at all.

Q. Well, they immediately took care of that and had a big reserve?

A. They immediately put in other plants.

Q. Because they needed a reserve?

A. Well, it was not only that, it was getting rid
31776 of some old coal gas plants they had, and putting in larger houses there, modern houses.

Q. When they did that they provided for a very substantial reserve?

A. They had a reserve, but it also involved the question that they put in houses where they could mak gas cheaper.

By Mr. Ransom:

Q. Were they not organized on the basis of maintaining a reserve in excess of thirty per cent, and when their reserve fell much below that they put in more apparatus?

A. No, I do not know as to that; I do not believe so.

The Master: We will suspend for a few minutes.

GEORGE E. GOLDTHWAITE resumed.

CROSS-EXAMINATION BY MR. GOETZ:

Q. Mr. Goldthwaite, in compiling your Table 157, which is Defendants' Exhibit AA122, did you attempt to transcribe for each item the exact figures given in the annual reports of the Consolidated Gas Company for the corresponding items in the annual reports?

A. Why, not for each item, because each figure is not copied from the report. Well, no, I did not, for each item.

Q. Well, take the first item— 31778

Mr. Chambers: Mr. Goetz, speak a little louder; I cannot hear you. You know, I like to hear your voice.

Mr. Goetz: I will do the best I can, but I cannot imitate some of my adversaries.

Q. Take the item "Gas on hand at the beginning of the year 1918, 28,545,000"—

The Master: 28,959, I have.

Mr. Goetz: Gas on hand at the beginning of the year?

The Master: 1906?

Mr. Goetz: No, 1918.

The Master: Oh, 1918. You did not say what 31779
you meant.

The Witness: 28,545?

The Master: Yes.

Q. Did you copy that precisely from the annual reports?

A. Yes.

Q. Likewise the balance on hand at the end of the year?

A. Yes.

Q. For the same year?

A. Yes, I copied them from the annual report to the Public Service Commission.

Q. Did you find any such item as "Used from holders," reported in the annual report?

A. I did not.

Q. That is a deduction of your own as to the source from which the gas came?

A. That is a deduction of my own. It is the difference between the gas on hand at the beginning of the year and the gas on hand at the end of the year.

Q. Do you know whether that gas did come from holders?

By the Master:

31781 Q. Why did you not designate that as "Difference between gas on hand at the beginning of the year and the end of the year"? Why did you say, "Used from holders"?

A. Well, I might have designated it in any one of several ways. I was not the final judge on the question.

Q. Mr. Maltbie or Mr. Hine gave you the heading of the subdivision?

A. It was approved by them. I do not remember who—

Q. Well, did you pick out the language, "Used from holders"?

31782 A. I don't remember.

The Master: Go ahead, Mr. Goetz.

By Mr. Goetz:

Q. Now, will you please turn to page 65, line 8 of the Annual Report of the Consolidated Gas Company for 1918, and read the figures after the item, "Delivered to Mains"?

Mr. Chambers: No, I object to that.

The Master: Why do you object to it?

Mr. Chambers: Well, reading some figures in. He can ask him what there is about it.

The Master: Objection overruled. What is the figure in that report, "Delivered to Mains"?

A. The figure on line 8, "Gas delivered to Mains" —this is in the report—is 19,543,973,200.

Q. Now, what are the figures given in your table for 1918, of gas delivered to mains?

A. The figure for gas delivered to mains in 1918 is 19,276,772 thousand cubic feet. That would be—

The Master: 19,000,000?

The Witness: 19,000,000,000.

Q. 19,000,000,000. Now, is it not a fact that for 31784
none of the other years shown upon your Exhibit AA-122 have you shown the precise figures for gas delivered to mains, as were shown in the annual reports of the company for the corresponding item?

A. I do not believe that I showed in any case the same figure "delivered to mains" as is given in the report, because my computation, as shown by the heading—

Mr. Goetz: I have not asked you for the reason.

A. (Continuing.) Eliminates duplicating purchases and sales.

Mr. Chambers: Hence the difference, is that 31785
right?

The Witness: That is correct, yes, sir.

Q. Where did you get the figure which you claim to be a duplication of purchases and sales?

A. There is no figure that I can say is a duplication, but there is certain gas sold to other companies of the system, there is certain gas bought from other companies of the system, and the difference between those two is the net gas received from the system shown here as "Received from other companies."

Q. Which line of the report do you refer to as stating the figures which disclose this duplication?

A. They are, line 4 is gas—

Q. Will you read them?

A. (Continuing.) —is "Gas received under agency agreement."

The Master: How much is that?

The Witness: 1,922,066,800. On line 5 is "Gas produced," 9,645,584,400. Line 15 is, "Gas supplied gas companies, agency agreement," which is 267,201,300. Line 16 is "Gas supplied
31787 gas companies, sold." There is no figure shown there, so that is zero. Now deduct that line 15 from the sum of lines 4 and 5, and you will get that figure I have shown as "Received from other companies."

Q. Is that what you were directed to do by Dr. Maltbie?

A. If you will note, I have a remark on that, "Received from other companies," "This is the net amount received after deducting the amount sold or supplied to other companies." That is how I was directed to do, yes.

Q. But it is a fact, that if you turn to the an-
31788 nual report for a particular year, you would not find the precise figures which you used for the corresponding item in your exhibit?

The Master: He has said that.

Mr. Chambers: He has said that already, and explained why.

Q. Now, for the item of "Total used and sold," did you use the same figures used in the corresponding item of the particular annual report of the company, or do your figures vary from the annual reports?

Mr. Chambers: Take one particular figure and date.

Mr. Goetz: I will give you a particular figure.

The Master: What is the question?

(Pending question read.)

A. My figures vary from the annual report.

Q. Well, take the annual report for 1918, page 65, and read the figures for "Total used and sold"?

A. The figure for "Total used and sold" line 18 in the report is, 18,363,874,100.

Q. Now, what figures did you use? 31790

A. The figure I have here for total used and sold is 18,096,673.

Q. This same variation exists for all the other years?

The Master: Well, the difference between that figure—

Mr. Chambers: I object to the use of the word "variation."

The Master: The difference between that figure total used and sold and this witness's figure delivered to mains is precisely the same, 267,201,300.

The Witness: It is. It is the difference shown by lines 15-16. 31791

Mr. Goetz: But when the annual report of the Public Service Commission speaks of a certain thing, it does not lie in the mouth of the defendants to come here and speak of the same thing in different terms.

The Master: Go ahead.

By Mr. Goetz:

Q. Is it not a fact that the annual reports for 1907 to 1910 have no item entitled "Total sold and used"?

A. I don't remember.

31792 George E. Goldthwaite, Cross.

Q. Well, how did you arrive at the "Total sold and used" in those reports?

The Master: Show him one of those reports.

Q. I show you annual report of the Consolidated Gas Company for the year 1909. Will you please turn to the page where you find an item reported there "Total sold and used" of gas?

A. What page did you say?

Q. Well, you find the page.

Mr. Chambers: What year?

Mr. Goetz: I cannot find it. 1909.

31793 A. Page 55 I have here, report for 1909.

Q. Will you give me the line number, and give me the language used on that line, which you say is reported as the total used and sold?

A. I did not take any line number for the total used and sold there. That figure is a computation.

Q. Well, now, what line in the annual report for 1919 corresponds with—

A. 1909, do you mean?

Q. (Continuing.) —the description that you used, "Total used and sold."

Mr. Chambers: Used in 1909 or 1919?

Mr. Goetz: 1909.

31794 A. There is no line that I see here that corresponds to any total of used and sold.

Q. Would you say that this is the fact also with regard to the other reports preceding the 1911 report?

A. I would not say, because I do not know.

The Master: Well, I can tell that at the end.

The Witness: I do not see any line in this report.

The Master: Direct your questions to 1909, and ask him how he made up that figure.

Mr. Goetz: Well, I want to bring out the variations. I will argue this thing later.

The Master: Go ahead.

By Mr. Goetz:

Q. Now, take the Annual Report for 1918 again; will you read the figure which is there reported as the percentage of unaccounted for gas?

A. As soon as the Master is through with the report.

The Master: Do you want this, 1918?

The Witness: 1918. (Accepting report.) In the 1918 report I read line 20, "Per cent of line 8," that is the item here, "6.038." 31796

Q. Now, what is line 8 entitled?

A. Line 20 is entitled, "Per cent of line 8." Line 8 is entitled, "Gas Delivered to Mains (6-7)."

Q. What percentage did you give in your computation for unaccounted for gas?

A. I gave no per cent of line 8; I gave my own per cent.

Q. You gave the per cent of "Delivered to Mains" in line 8 as the line reporting the quantity delivered to mains, is it not?

A. I have here my item "Unaccounted for in per cent of Delivered to Mains," that refers to a foot note, "Computed, the figure for 1918 is 6.12." 31797

Q. And the annual report for 1918 also requires the Consolidated Gas Company to report the percentage of unaccounted for gas, related to the delivered to mains, does it not?

A. Well, you can use your own interpretation of the report.

Q. The language is no different.

By the Master:

Q. Is there not a line that calls for it?

A. Yes, there is a line that calls for it.

Q. Is it not filled in?

A. It is filled in, yes.

Q. What is the figure the company gave?

A. The figure the company gave on that line, which is not specifically described, is 6.038.

Q. What does it say on that line?

A. Well, it just says, "Per cent of Line 8."

Mr. Goetz: What is line 8? Line 8 is the "Delivered to Mains" gas. You might as well say it is the per cent of delivered to mains, exactly the same thing as the witness used.

31799 Mr. Chambers: Now, Mr. Goetz; do I have to be forever cautioning you?

Mr. Goetz: Well, if you were the Master, you might caution me.

The Master: Go ahead.

By Mr. Goetz:

Q. Is it a fact that for all the other years you did not take the same percentage that was reported by the Consolidated Gas Company in its annual reports for unaccounted for gas?

A. I do not believe that I took in any year the percentage reported by the Consolidated Gas Company for unaccounted for gas. I do not believe I

31800 did, for any year.

Q. Is it also a fact that prior to 1911 the reports did not require the Consolidated Gas Company to give the percentage of unaccounted for gas?

A. I do not remember. I do not believe they did, in the earlier reports.

Q. Take for example the report for 1909, is that not the one?

A. In the report for 1909, page 55, I see no item that calls for "Per cent Unaccounted for."

Q. Is it not a fact that the balance of gas at the end of the year agrees with the quantity of gas on hand at the beginning of the year?

The Master: What is that?

Q. Is it not a fact that the balance of gas on hand at the end of the year ought to agree with the quantity of gas at the beginning of the year?

A. It should if the report is correct. The amount of gas on hand at the end of one year should be the same as on hand at the beginning of the following year, if the report is correct.

Q. Did not the annual report of the Consolidated Gas Company for 1916 show that the gas on hand at the beginning of the year was 35,793,000 cubic feet?

31802

A. It did, according to this table.

Q. Well, should not your table correspondingly be corrected so as to show that there was the same balance of gas at the end of the year 1915?

A. There is a question there whether it should be.

Q. Well, did not the—

A. (Interposing.) The report in 1916 was first made with an erroneous figure.

Q. Did not the Commission require a correction to be made in the annual report for 1916, so as to show—

A. (Interposing.) I do not know whether the Commission required it. The correction was made by a note, and the note, as I remember it, did not say how far back the correction should be carried. Perhaps the figures for two years were erroneous. I could not tell.

31803

Q. Well, there is no doubt in your mind that if 35,793,000,000 was correct as of January 1, 1916, 29,624,000,000 was not correct as of December 31, 1915, is there?

A. It is the only figure in that report. That report was not corrected.

Q. Now, if the figure of the balance of gas at the end of the year 1915 is not correct, is not your entire computation incorrect?

A. There may be in 1915, due to that uncorrected figure, due to the erroneous figure which the Consolidated Gas reported, there may be a small fraction of a per cent difference in the figure shown in the table.

Q. Well, it is a difference of six billion cubic feet of gas, is it not?

A. It is not.

31805 Q. Well, the difference between 29,000,000,000—29,624,000,000 and 35,793,000,000 is how much?

A. I do not see any such figures.

Q. Well, look at your table for 1915, balance at the end of the year.

The Master: The difference between that figure and that figure (indicating) is six billion.

The Witness: Twenty-nine million and thirty-five million.

Q. Twenty-nine billion?

A. No, that is not billion.

Q. Well, twenty-five billion cubic feet of gas—

A. No, it is—

Q. Oh, 29,000,000.

31806 A. 29,000,000.

Q. It is a difference of 6,000,000 cubic feet of gas?

A. Of 6,000,000, approximately, and the output for that year was in the nature of 16,000,000,000.

Q. Did you try to ascertain whether the Public Service Commission, through its Accounting Department, did in fact trace back the corrections which ought to be made in the previous years, in order to reflect the gas which was in the Kingsbridge holder and which was in the first report of 1916 not in-

cluded and afterwards the report was corrected so as to include that?

A. I did not attempt to find out what the Public Service Commission had done about it. I took the figures as reported.

Q. You did not ask Dr. Weber?

A. I did not ask Dr. Weber, no.

Q. Did you ask Dr. Weber for all the papers in connection with the reports?

A. I called for the reports only, and the—well, I only called for the reports.

Q. Did you examine the correspondence in the 31808
folder containing the reports?

A. I examined the corrections made on the pages shown, the pages from which my figures were taken. I may have examined some other papers, I do not remember.

Q. You noticed that for these reports there is always a file of correspondence attached, like this (indicating)?

A. Not always, no.

Q. But you noticed it in some cases?

A. In some cases, possibly. I don't remember that there was with those reports.

Q. You see that I take them out from the slip 31809
of the binder of the report?

A. Yes, I see you are taking some papers out there.

Q. Well, now, did you examine these papers?

A. I don't believe so. I don't believe I have ever seen those papers.

Q. Do you know whether the figures given in your Exhibit AA-122 for the quantity of gas in 1912, '13, '14 and '15 should include the gas on hand in the Kingsbridge holder?

A. Why, I don't know. I didn't find anything in the reports to indicate whether it included the gas

on hand in the Kingsbridge holder, except for that one year.

Q. Will you turn to your Table 150, Exhibit AA-132.

A. I have it.

Q. Relating to the manufacturing capacity, 1906 to 1918. Will you tell me where you got the figures of 34,000,000 water gas capacity for the Consolidated Gas Company?

The Master: What year is that?

Mr. Goetz: 1918.

31811 A. It appears here to be the sum of 28,500,000 and 5,500,000.

The Master: Where do you find that in that report?

The Witness: Page 44.

Q. Will you read the figures given in the annual report?

A. What figures?

Q. Corresponding with the figures which you used (indicating)?

A. For 21st Street, 28,500,000, for 99th Street, 5,500,000. Total 34,000,000.

Q. Did you find a footnote to those figures?

31812 A. A foot note "X Operating Capacity for Entire plant."

Q. Did you find a similar footnote for the other companies' reports for the same item?

A. I believe I did, for some of them. I don't know.

Q. Take the report of the New York Mutual Gas Light Company for 1918 and tell me whether you found any such footnote there?

Mr. Chambers: Do you mean the Consolidated make footnotes and the other companies do not make any footnotes?

A. I see no footnote on the corresponding figure for the New York Mutual in the report for 1918.

Q. Will you read the corresponding figure for the Mutual for 1918?

A. The corresponding figure is—

Mr. Chambers: In his table he has lumped them all in together.

Q. We will take the total.

A. It is 24,000,000.

Q. Give me the figures in the report for each of the stations?

A. I see only one station here. There are two figures, one of them 8,000,000 and the other 16,000,000.

Q. Did not the absence of a footnote in the other 31814
annual reports indicate to you some significance as to the footnotes?

The Master: On the Consolidated report?

Mr. Goetz: Yes, and for all the other companies.

A. Why, I made a record of the footnote.

The Master: Well, did it mean anything to you?

The Witness: Why, I thought I understood it.

The Master: What did you think you understood?

Mr. Goetz: What was the difference between 31815
the one and the other?

The Witness: At that time I do not believe that I attempted to understand it. I made a record of the footnote and showed the figures to Mr. Maltbie and Mr. Hine, and was told which to use, or told what to use.

By the Master:

Q. Were you told what the difference was?

A. I do not remember whether they told me or not.

Q. Did you find out?

A. Well, I can tell from the reports here that there is a difference.

Q. What is the difference?

A. That the New York Mutual here apparently reports the total capacity of all its machines. That is what it indicates to me. I do not know that that is accurate or correct.

Q. And of the Consolidated?

A. The Consolidated does not give the capacity of its individual machines. There is nothing to indi-
31817 cate how they got at that figure except the footnote "Operating Capacity for Entire Plant."

By Mr. Goetz:

Q. How many machines are reported by the New York Mutual for 1918?

A. New York Mutual, 1918, there are twelve here reported in Column B.

Q. Have you answered the question?

The Master: He says the New York Mutual reports twelve in Column B.

Mr. Chambers: Twelve machines.

Q. Will you give the figures there? Four machines of what capacity—of eight million capacity, and eight
31818 machines—

A. Twenty-four hour capacity, eight million for four machines.

The Master: Each?

Mr. Goetz: No, total.

The Witness: Total. The total for four machines.

Q. In twenty-four hours?

The Master: That is eight million.

A. Eight million. That is apparently the total. I do not see any other figure to indicate the total.

The Master: What else is there for the other eight machines?

The Witness: Eight machines, sixteen million, twenty-four hour capacity.

Q. In compiling this table did you generally disregard footnotes?

A. I did not disregard the footnotes; I made a record of such footnotes as I found.

Q. I mean you did not reproduce the footnotes in your exhibit?

A. I did not reproduce the footnotes in my—

Q. In your exhibit?

A. In my exhibit.

Q. What does the report show there as the maxi- 31820
mum day's make at the plant of the New York Mutual in 1918?

A. Well, that is not in any of my exhibits. I do not have—

Q. Did you look at it at all?

A. I made no record at any time of the maximum make of any of the companies.

Q. Did you look at the figures of the New York Mutual while you were doing this work?

A. For maximum make? I certainly did not.

Q. You did not?

A. No.

Q. What did you understand by the caption "Man- 31821
ufacturing Capacity"? Was that the generator capacity or the plant capacity, or what?

A. Will you repeat the question, please?

Q. What did you intend to imply by using the caption "Manufacturing Capacity" in your exhibit?

A. I did not mean to imply anything. The meanings were not interpreted by me.

Q. Did you find a term in the annual reports "Manufacturing Capacity"?

A. I don't remember whether I found that exact term or not, "Manufacturing Capacity."

Q. Now, look at the annual report for 1918 of the Consolidated Gas Company and tell me whether on the page from which you took your figures you find that caption to denote or describe the data which you attempted to set forth in this exhibit?

A. I don't see anything that says "Manufacturing Capacity." I see "24-hour capacity," that is all.

Q. Does it not say 24-hour generator capacity on the generators given, and not the plant as a whole?

A. The heading of the column is "24-hour capacity."

31823 By the Master:

Q. Well, that is the last column to the right of the page, is it not?

A. Yes, that is the column from which I got the figures.

Q. The account is No. 475, water gas sets 143-A; is that right.

A. That is correct.

Q. And the instructive language is: "1. Show hereunder the particulars called for concerning the water gas sets in the respondent's plants at the close of the year." Column 1, Location; column 2, No. of Sets; column 3, Maker's Size No.; column 4, The

31824 Maker; column 5, Type; column 6 subdivided, Generator, height and diameter; next column subdivided, Carbureter, height and diameter; next column subdivided, Superheater, height and diameter; next column, 24 capacity M cubic feet.

A. 24-hour capacity.

Q. 24-hour capacity M cubic feet. Now, what does that refer to, to your mind? What those particular machines are designed to make, is it not?

A. Apparently, yes.

Mr. Goetz: The water gas sets themselves.

The Master: Yes.

By Mr. Goetz:

Q. Take the New York Mutual report for 1918, page 44. That is similarly entitled "Water Gas Sets"?

Mr. Chambers: I object to that. Mr. Goldthwaite did not have anything to do with those pages. Why ask him to interpret it? I do not think it is proper cross. Why not stick to the matters that he worked upon?

Mr. Goetz: It is not quite accurate to say that Mr. Goldthwaite did not have anything to do with the figures in the New York Mutual, 31826 when the exhibit to which Mr. Goldthwaite swore is the figures for the New York Mutual taken from the annual report.

The Master: This is the same thing exactly, "Water gas Sets, 1918."

Mr. Chambers: I know, but he did not have anything to do with that page.

The Master: Certainly he did.

Mr. Chambers: That page?

The Master: Certainly, yes. That very figure 44,000 is included there.

Mr. Chambers: Oh, is that the page that figure is on?

31827

The Master: Yes.

Mr. Chambers: I thought he was asking for some definition. Excuse me.

Q. Was there anything on the page of that report to which you have referred, or any other pages, which you used in making any of your compilations here to indicate the capacity of the purifier, the condenser, the exhauster or the scrubber, or any other apparatus at the plants?

The Master: What plant are you talking about now?

Mr. Goetz: At the New York Mutual plant.

A. If there was I did not look for them.

Q. You did not mean to imply by this exhibit that the capacity of all the other apparatus in the plant was, for the New York Mutual, 24,000,000 during the year 1918?

Mr. Chambers: Just a minute, I object to that as incompetent. He told you just what the exhibit represents.

Mr. Goetz: He has not. He said one thing and he demonstrated he did an entirely different thing. He took it from the annual report.

31829 Mr. Chambers: I object to the question because "You do not mean to imply," et cetera, is improper.

Mr. Goetz: I am cross-examining him; I do not know what his motive may be.

Mr. Chambers: He told what is represented.

A. Will you repeat the question?

The Master: Let us hear the question.

Q. You did not mean to imply by this exhibit that the capacity of all the other apparatus in the plant was, for the New York Mutual, 24,000,000 during the year 1918?

A. I implied nothing.

The Master: What do you say—

31830 Mr. Goetz: The capacity of the New York Mutual, for instance. I will state very frankly what the point of these things is. The other exhibits put in by Mr. Pyle show that the output of the New York Mutual in 1918 was about fifteen million odd.

The Master: Fifteen million what?

Mr. Goetz: Fifteen million odd cubic feet of gas; precisely, 15,716,000 cubic feet of gas. Now it is here represented that the capacity of that plant is 24,000,000.

The Master: 34.

Mr. Chambers: No, we did not represent anything.

Mr. Goetz: Indicating an idle capacity of eight million cubic feet of gas a day, which is not true, because you have got to consider the plant as a whole. You have got to consider the capacity of all the other apparatus, and if the other apparatus cannot take care of twenty-four million cubic feet of gas, then the fact that the generator sets are capable of doing that does not justify the assertion here that that is the 31832
manufacturing capacity of the plant. My criticism is that this thing is labeled, "Manufacturing Capacity," indicating manufacturing capacity of the plant, whereas that is not the fact. The company reported simply the capacity of the generator sets, which does not indicate the capacity of the plant.

The Master: Whereas the Consolidated specifically states that it is the operating capacity of the entire plant?

Mr. Goetz: Yes.

Mr. Vilas: Exactly, and the two figures are not comparable.

Mr. O'Brien: Well, you are a good little witness, Mr. Goetz. 31833

Q. Take Table 151, Defendants' Exhibit AA-133—in preparing this exhibit did you collaborate with Mr. Pyle?

A. I did not that I know of; I don't remember that I did.

Q. Now, take the report of the New York Mutual for 1918, will you please tell me what quantity of gas which was reported by the New York Mutual Gas Light Company for the loss of volume during 1918, did you include in your exhibits?

A. I don't see that I have made note of any loss of volume included.

Q. This Table 151, Defendants' Exhibit AA-133, takes that into account, doesn't it?

Q. Why, I can explain that. Wherever I found a note of loss of volume on the page from which I took these figures I tried to include that loss of volume in the total gas manufactured. If the loss in volume was not noted I probably got the correct figure anyhow.

Q. Did the New York Mutual Gas Light Company
31835 report the loss of volume which was a part of the gross manufacture?

A. On page 68, from which I took my figure, I see no record of loss of volume for the New York Mutual in 1918.

Q. I show you a file of papers which I have just taken out of the folder from which the report in that year was taken, entitled, "Annual Report, New York Mutual Gas Light Company, for the year ended December 31, 1918," and stamped, "'Public Service Commission, Bureau of Statistics and Accounts." I ask you whether you ever saw this file?

A. I don't recognize it.

Q. Did you ever see the folder from which I took
31836 it?

A. The folder in which the annual report was enclosed?

Q. Yes?

A. I believe so, yes. If I remember correctly the reports may have been in that when I got them, some of the reports were and some were not.

Q. Did you do all your work at the Public Service Commission I mean transcribing your figures from the annual reports?

A. I never removed these reports from the Public Service Commission.

Q. I mean did you do all of your transcribing at the office of the Public Service Commission?

A. Yes.

Mr. Chambers: You mean did he work up there?

Mr. Goetz: Yes.

A. Yes.

Q. Did you see this letter of July 29, 1919, a part of this file from the New York Mutual Gas Light Company to the Public Service Commission for the First District?

A. I don't remember the letter, no. 31838

Mr. Goetz: I offer in evidence this letter of July 29, 1919.

The Master: Can't you just read it into the record?

Mr. Goetz: I prefer to do that.

The Master: Show it to Mr. Chambers and I will rule on it.

Mr. Goetz: I have another question.

Q. Will you read the quantity of gas manufactured by the New York Mutual Gas Light Company during 1918 which you took out of the annual report of that company?

A. The figure on page 68, "M cubic feet corrected, 3,254,338"—that is the same figure I have on my table; that is M cubic feet corrected. 31839

Q. If you were to add to that quantity of gas manufactured, 13,588,000 cubic feet which was reported in this letter of July 29, 1919—

Mr. Chambers: I object to that.

The Master: Objection overruled. I will permit Mr. Goetz to read in evidence so much of it as bears upon this item.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Chambers: Exception.

Mr. Goetz (reading): "In answer to your letter under date of July 16th, referring to our report to the Commission for the year ended December 31, 1908, submit the following: Page 55, 'Please state loss in volume of gas incidental to the recovery of light oil for the United States Government, and indicate where such amount is included on page 65, Schedule 65-A.' A. Loss is as stated, $6,279.51. Quantity as shown on
31841 page 65, line 3, is net, the gross amount being 3,267,926,700 cu. ft. Loss in volume 13,588,700 cu. ft. Net 3,264,338,000 cu. ft."

Q. In your figures for the New York Mutual Gas Light Company for 1918, you did not take into account this reported loss in volume during that year?

A. I did not.

The Master: I see you did as to some other companies for that year and other years.

The Witness: Where they were reported on the page, or one of the pages that I used.

The Master: What difference does it make where it was reported?

31842 The Witness: Well, I don't know that that letter was in there when I took the figure down. I made a reasonable attempt to get all corrections in.

Q. Didn't you know that these files that are attached to the folder contain the correspondence between the Public Service Commission and the various gas companies relative to the corrections required by the Commission to be made in these reports?

A. I do not know that they contain all the correspondence. I knew that there were letters there. I also knew that on each page the Public Service Commission had pasted on notes for the corrections.

Q. Did you look at the correspondence in any of the other folders?

Mr. Chambers: Are you going to show just what the Public Service Commission does to these corrections? They place slips on where there is any correction of importance.

The Master: I suppose that Mr. Goldthwaite relied on the slips being correctly pasted on, did you?

The Witness: I believed so. I do not believe that I went through all the correspondence looking for corrections. I know in some cases I did look in correspondence for corrections. 31844

The Master: I imagine it was a fair assumption on the part of this witness that all corrections were pasted in.

The Witness: There were a number of them on that page, and I did not find that correction among them.

Mr. Goetz: I don't think we ought to be bound by those slips, when the Commission requires certain changes to be made.

The Master: You are not, but this witness is not to be criticised so far as his work was concerned in assuming that they were all pasted in. The result may be incorrect. 31845

Mr. Goetz: If the witness were doing an accurate piece of work he would have gone through these files attached to the reports and seen the corrections.

Mr. O'Brien: Unsworn data.

Mr. Chambers: Why didn't Mr. Goetz have them get a slip and paste it on there? Weren't you up there then, or had you left?

Mr. Goetz: I was doing most of the work of the Commission, not all; I was not doing clerical work.

Mr. Chambers: I want to call the Master's attention to the fact that he was using sworn reports, and this is an unsworn statement, merely a letter.

Q. Now, turning to your Exhibit AA-137, Table 162—

A. I have it.

The Master: Is that one of yours?

The Witness: I made the computation.

Q. Do you find on the pages of the annual reports of the various gas companies any note indicating the
31847 holder capacity which should be deducted or which you deducted in the column bearing the note B, as detailed in the footnote bearing the same mark?

A. I did not; I deducted that according to instructions.

Q. Where did you get these figures?

A. The figures correspond to the capacities of the holders named as reported to the Commission.

Q. For those years?

A. Well, I don't know whether they were reported for all those years.

Q. Well, you took these figures—

A. You will find these capacities somewhere in the
31848 report.

Q. Well, take for example the footnotes, "Same as A, except that the following deductions are made: Six 350,000 cubic foot holders at East Fourteenth Street 1906 to 1915, inclusive." Where did you get the figure six, or the number six, and the figure 350,000 cubic feet, or were those given to you by Dr. Maltbie or Mr. Hine?

A. Well, those were given to me, but I can also refer you to the reports. I made a note of that, that there were six holders at East Fourteenth Street reported to 1915, inclusive.

Q. From 1906 to 1915, inclusive?

A. That is the note I have here shows it as 1908; I suppose it goes back to 1906.

Q. You say here 1906 to 1915.

A. But that was not my date; I did not set those dates.

Q. You did not set those dates?

A. No.

Q. Well, you don't know exactly what years these holders were reported for these quantities or capacities?

A. I know they were reported 1908 to 1915; I don't know whether they were reported in 1906 and 1907. 31850

Q. Would the same explanation apply to all the other holders in columns 1, 2, 3, 4, 5 and 6?

A. I don't know. I have some other notes on that not with me here. Those figures I did not check. I was given those figures and those dates, and deducted that as shown on the sheet. That is all I know about it.

Q. Is there any item in the annual reports of the Consolidated Gas Company or the other gas companies which requires the company to report the relation of holder capacity to the average daily sales to the public? 31851

A. I don't know; I never looked for such a figure.

Q. Well, you didn't take the caption which you used on Exhibit AA-137 from the annual reports, did you?

A. The caption?

Q. Yes.

A. I did not, that is not my caption. I put that on the table according to instructions.

Q. Where did you take the figures for holder capacity column A from? Were not those reproduced

from the other exhibits to which you have testified in this case, Exhibit AA-124?

A. Those figures are taken from that other table with the deduction noted under Note A.

Q. Take your Exhibit AA-124, and tell me what the total holder capacity reported for 1918 of all the companies of the system that you have on that exhibit is?

A. 1918?

Q. Yes.

A. All the companies of the System?

31853 Q. Yes.

A. 120,351,000.

Q. Will you give me the figures for the Consolidated Gas Company for 1918, holder capacity, taken from Exhibit AA124.

A. 49,660,000.

Q. What are the figures that you have given for holder capacity for 1918 on Exhibit AA137 for the Consolidated Gas Company?

A. 44,660,000.

Q. How do you account for the difference between the holder capacity as shown on Exhibit AA137 and the holder capacity of the Consolidated Gas Company

31854 shown on Exhibit AA124?

A. By the Note A, which explains that from 1912 to 1918, inclusive, one-half of the capacity of the 10,000,000 cubic feet Kingsbridge holder is deducted.

Q. Who told you to deduct the 5,000,000 capacity for the Kingsbridge holder?

A. Mr. Hine.

Q. You don't know where he got that figure, do you? From the report of the Company?

Mr. Chambers: I do, from the testimony in this case.

A. I can tell you, I think, that that holder is reported by the Company as a 10,000,000 cubic foot holder.

The Master: Did you deduct 5,000,000?

The Witness: That was according to instructions; I did not understand the reason. That is merely a computation so far as I am concerned.

Mr. Chambers: Does the Master remember why?

Q. Is the first column entitled, "Gas Sold to Public" supposed to be the total for the year?

A. Yes.

Q. On Exhibit AA137?

A. That is the total for the year.

Q. Where did you get the average M feet of gas 31856
sold to the public for twenty-four hours?

A. Why, I divided by 365.

Q. Did you divide the 18,000,000 by 365?

A. Yes, 18,000,000 in 1918.

Q. Now, you made no distinction in your figures on Exhibit AA137 between the capacity of the storage holders and the capacity of the relief holders, did you?

A. Why, that was not considered any more than in the table from which it was calculated.

Q. In other words, you reproduced in Exhibit AA137 the same method of computing the holder capacity that you used in Exhibit AA124?

A. Well, I took the figures of 137 from the other 31857
exhibit.

Q. With all its infirmities, if any?

A. Just as they were, with the deduction notice.

Mr. Goetz: I move that Defendants' Exhibit AA137 be stricken from the record on the ground that it appears, in the first place, that it is built up on a table which has been demonstrated to be fallacious and incorrect; and in the next place that the calculations made in this table, which are a kind of a box with all kinds of angles and all kinds of sides, were not built by this witness, but

were built by somebody else, and the witness cannot now explain the reason or the rhyme for this calculation, and that we are deprived of the right to cross-examine Mr. Hine upon the correctness of this table before it goes into evidence.

The Master: Motion denied.

Q. What did Mr. Hine tell you to be the purpose of this table shown on Exhibit AA137?

A. He did not tell me.

Q. He just outlined to you the captions, and told you where you might get the figures, and you proceeded

31859 to do that automatically.

A. He told me what data he wanted, as explained on the table, and I prepared the table in accordance with instructions.

Mr. Goetz: I would like to add to my grounds for the motion to strike out these exhibits, that it appears very clearly that these computations of holders to be deducted from the holder capacity have no basis in this record. I take an exception to the ruling.

Q. How long have you worked for Mr. Hine or Mr. Maltbie?

A. Since sometime last July, 1919.

31860 Q. Have you worked on these exhibits ever since?

A. Why, no, not altogether on these exhibits.

Q. Has the greater part of your time been devoted to the compilation of these exhibits?

A. I could not say.

Mr. O'Brien: What has that got to do with the case?

Mr. Goetz: Why, the accuracy of the man's work, and the competency to do the kind of work he is put up here to testify to.

Mr. O'Brien: You and Davidson have kept tabs on them. He knows how long they worked, and what they were working at.

The Master: Proceed with your questions if you don't want to work evenings next week.

Q. What is your salary, Mr. Goldthwaite?

The Master: What difference does that make?

Mr. Goetz: It does make a difference. It makes the same kind of difference as it makes when the defendants want to ask our witnesses their salaries.

A. Do you want it?

Q. Yes.

A. $200 a month.

Q. Have you been promised any increase on the re- 31862
sults of the work done by you?

A. I have not. There has not been a word spoken about an increase one way or the other.

The Master: You are willing to take it any time it comes?

The Witness: I am, yes.

Q. Has that been your salary during the entire period of your employment with them?

A. That has been the salary at the start, it is the salary right now, and as far as I know it is the only salary there ever will be.

Mr. Goetz: I may say, your Honor, that I may have to recall this witness. Most of the exhibits 31863
were put in yesterday between half past two and a quarter to three, and by the time we were able to send them up for checking most of the force was gone, and most of the checking of these exhibits had to be done very late at night. That is all with the witness at the present.

RE-DIRECT EXAMINATION BY MR. CHAMBERS:

Q. In working on this case, Mr. Goldthwaite, have you worked almost continuously since last July or August?

A. Sometime the latter part of July.

Q. Almost continuously up to the present time?

A. Almost continuously, yes.

The Master: What difference does it make. I don't want to be here next July either.

Mr. O'Brien: I can see St. Patrick's Day coming and Decoration Day.

31865 The Master: I can see this thing coming to an end pretty quickly.

Q. Do you recall that on October 25th you made a verbal request of Mr. Davidson—you know who Mr. Davidson is?

A. Yes, sir.

Q. Do you recall that you made a request of him on October 25th, 1919, for some information, calling on him for maps or data that would show transmission and transfer mains?

A. I recall that I made a request about that date, yes.

Q. And then you followed that request up on Oc-

21866 tober 30th, 1919, by a written memorandum?

A. Yes.

Q. What happened, do you recall? If you cannot remember, will you refresh your recollection?

A. On November 1st I received a typewritten list of the Consolidated Gas Company's transfer mains. I gave him a note then saying that the list was unsatisfactory and that we wanted the maps or records showing this for all the Consolidated system. On November 6 he gave me another certain typewritten list of such mains for the system outside of the Consolidated Gas Company. I told him that was not what

we wanted and gave him another memorandum calling for the maps or actual records on the matter, and reminded him frequently afterwards of it, and he said it was up to the mains department, and that they would give a reply sometime. He said he was quite sure that no such reports existed and that it was useless to press the matter. On the date of this memorandum which I made, November 9th, there was no further outcome of the matter. The records have not been produced.

Q. Did that hold up your work?

A. It certainly did.

Q. Did you ever get those reports that you recall? 31868
If so, when?

A. Yes, I was finally shown a map that purported to be made the record that I thought. I forget the date of that. It was a week or maybe two weeks later.

Q. You needed that information at the time, did you?

A. I did.

Q. To progress your work?

A. I did.

Q. Do you recall any other instance wherein your work was held up by lack of furnishing you records and papers?

A. Yes, there was another instance in which I asked 31869
for certain holder records. The written request was made November 3rd—

Mr. Goetz: I object to this witness testifying any further with regard to these generalities. He asked for certain things. Now, these certain things are pretty well indicated by the character of the exhibits that have been put in. They are altogether imaginary and speculative and come out of the creation of the minds of some of these experts, electrical engineers and so on. I object unless the witness specifies what he asked for and what it is that was refused.

A. Another request, I made, I just started to tell about, was on November 3rd, for certain holder records which I supposed existed.

By the Master:

Q. Well, what were they; what did you ask for?

A. Records showing the daily stand of each holder of the system.

Q. What do you mean by daily stand?

A. The number of cubic feet of gas contained each day, presumably the record which the man in the exhauster house makes. I never received those records.

31871 After several weeks of argument, why, they finally told me there were no such records.

By Mr. Chambers:

Q. And you have not received them to this day?

A. And I have not received them to this day.

The Master: How could you if there were not any?

The Witness: Maybe there are none, but they took about two weeks to tell me they did not exist.

Q. Is there any other instance where you called for records and papers of the Consolidated Gas Company that you were delayed and did not get them?

Mr. Goetz: I object to the characterization

31872 "any other instance." It is quite apparent that if he was delayed and did not get them there was no such thing in existence. This is ridiculous.

The Master: Overruled. I will take it.

Mr. Goetz: Exception.

A. There were some cases, yes. I made memorandums of them. I cannot recall specifically what they were now.

Q. In which your work was held up?

A. In which my work was held up.

Q. For lack of—

A. For lack of information, for lack of data.

Mr. Chambers: I think that is all at the present time.

RE-CROSS EXAMINATION BY MR. GOETZ:

Q. Did you inquire whether any of these things that you asked for were in the hands of some of the other witnesses for the defendants who were working at the Consolidated Gas Company? When I say witnesses, I mean employees of the defendants.

A. I did not inquire if they were, because I had no knowledge of where they were. 31874

Q. What particulars did you ask Mr. Davidson to give you when you said at the outset there were certain things that you asked him to get for you? What were the things?

A. They were given in a written memorandum. I cannot remember the specific working.

Q. Have you got a copy of the memorandum?

A. I have copies of the memorandum in my desk.

Q. Have you got it here with you?

A. I do not have it here with me.

Q. What is your best recollection as to what you asked for in your memorandum to Mr. Davidson?

A. I would rather not say just the wording of what I asked for. 31875

Q. Can't you describe now what it was that you wanted?

The Master: Who prepared the memorandum?

The Witness: I did.

Q. Can't you say now what it was that you wanted at that time, that you did not get?

A. Not more accurately than on that memorandum (indicating).

Mr. Goetz: May I see that memorandum?

Mr. Chambers: At the top there (handing Mr. Goetz).

Q. You read from that memorandum, did you not?

A. I read substantially, I did not read it verbatim.

Q. Were you not told that the company had a complete set of transmission and transfer mains?

The Master: A complete set of what, maps, records or what?

Mr. Goetz: Maps.

The Master: Of its transmission and transfer mains.

A. I was told for a while that it did not have, and then afterward I was shown the maps.

31877 Q. When were you shown the map?

A. The date is not given there—I have it on the memorandum. I cannot recall all those dates.

Q. About when?

A. I cannot recall. I can produce them.

Q. Didn't you go through various offices of the Consolidated Gas Company, in the engineering department; weren't you with Mr. Hine and myself one day a number of months ago, before this request was made, in the engineering department, and where they keep the maps and plans not only of the buildings but of the mains and so on? Weren't you there with me one day?

31878 A. Not where they keep them. I remember the day you refer to. We were in one of the drafting rooms with a pile of maps on the table.

Q. Didn't you see in those rooms a map showing the transfer mains, the transmission and transfer mains, hung up on the wall?

A. I saw a big map which I did not examine.

Q. How many times were you in that room?

A. Oh, I don't remember; half a dozen, maybe.

Q. How many times was Mr. Hine in that room, do you know of your own knowledge?

A. I only remember twice.

By the Master:

Q. What did you want them to do, make a copy of that map?

A. No, I had nothing to do with the maps at that time. I took no interest in it.

Q. Was that the map you were looking for later?

A. It afterwards proved to be the map I was looking for. At that time I did not look at it; I did not know what it was.

By Mr. Goetz:

Q. Are you aware of the fact that the company gave Mr. Hine, or turned to Mr. Hine its complete index of 31880 all its maps? Weren't you aware of that fact?

A. No, I was not aware of it.

Q. Wasn't that the thing we discussed the morning we were up there together?

A. A complete index of all these maps?

Q. Mr. Hine asked for the index of our maps and I said I would get it for him?

A. I do not remember any such thing.

Q. Don't you know that Mr. Hine or his assistant went through our index of maps and indicated to us each and every map that he wanted a copy of, and we gave it to him; don't you know that to be a fact?

A. I saw no index of maps whatever. 31881

Q. Mr. Hine never told you that he went through that index?

A. No.

Q. And that he got every map he asked for—got a copy of it at our own expense, without any expense to the defendants?

A. I recollect nothing in connection with any index of maps.

Q. Haven't you seen rolls and rolls of maps coming from the Consolidated Gas Company to Mr. Hine's office?

A. To Mr. Hine's office?

Q. Yes.

A. No, I do not recall a map that has ever come down there.

Q. From the Consolidated Gas Company to Mr. Hine?

A. No, I do not recollect.

Mr. Goetz: Well, we will show that when Mr. Hine comes back on the stand. I am not going to take up any more time with this piffling thing.

Mr. Chambers: With what?

Mr. Goetz: With this piffle. We met every re-
31883 quest of the defendants that was made.

Mr. Chambers: Do not get into the habit of Mr. Ransom, Mr. Goetz.

The Master: Are you ready to cross-examine the other witness, Mr. Pyle?

Mr. Goetz: I will say frankly that Judge Ransom was supposed to cross-examine all these witnesses, and I am simply a pinch hitter.

The Master: Would you rather wait for a recess?

Mr. Chambers: I think we had better have an adjournment until Monday, if Mr. Ransom is not ready.

31884 Mr. Goetz: No, we will take the other witnesses. We will be ready at two o clock.

Recess.

Afternoon session.

CLIFFORD H. PYLE resumed the stand:

CROSS-EXAMINATION BY MR. RANSOM (continued):

Q. Have you now secured your working papers, Mr. Pyle?

A. I have.

Q. Of the total amount of 33,127,384 M cubic feet which you set forth as having been made during the year for the Consolidated system, 1918, as shown by your Exhibit AA125, what was the amount of gas 31886
which you set down as made during that year by the New York Mutual Gas Light Company?

A. That is the same question you asked me before.

Q. Yes, and you could not give it to me.

A. Well, I took that directly from Table 151, Exhibit AA133, as put in evidence by Mr. Goldthwaite.

Q. Well, what was the amount that you took?

A. I took the total amount. On Exhibit AA133 he gives the total for the system 33,127,384 M cubic feet.

Q. Well, how many—

A. I took that right directly from that table?

Q. And you did not take that from the report at all? 31887

A. That came from the report, as investigated by Mr. Goldthwaite.

Q. Well, how many thousand cubic feet in that figure are as made by the Mutual?

A. I did not investigate that myself.

Q. Did you inquire of Goldthwaite at all about it?

A. Only as to the total. I took the total from the table that he had made up.

Q. What exhibit did you say you took that from?

A. Well, it is Table 151, Exhibit AA133, I believe.

Q. Then do I correctly understand that this table of yours, 156, is simply a compilation from other exhibits, and not at all from reports?

A. No, sir, that is the only set of figures, namely, the gas made during the year, which I took from another table. The rest are either computations based on figures in this same Table 156, or else taken from the original reports.

Q. Well, then, as far as you are concerned, all you are able to say is that if Mr. Goldthwaite made an error in failing to take into account that loss in volume,

31889 the same error affects your table on the New York Mutual mains?

A. No, all I—

Mr. Chambers: I object to that.

The Master: I will allow it.

A. All I state is that I took the gas made during the year from Report 151, and then, in the next line, the next item in my table I allowed for the loss in volume, deducted it. I took his total as not allowing for the loss in volume, and then I allowed for the loss in volume.

Q. Will you give me the several quantities for each of the companies which make up your claim total

31890 of 30,582,447 M cubic feet sold to the public in 1918?

A. For the Consolidated Gas Company, in 1918, 18,029,245 M cubic feet.

Q. Right. What else?

A. The next company, the Astoria Light, Heat & Power, 81,085 M cubic feet.

Q. 81,085?

Mr. Goetz: That is correct.

A. I have a note on that saying that it includes 80,823,300 cubic feet sold to the United States Government.

Q. You drop the hundred now, don't you?

A. Yes.

Q. The New Amsterdam?

A. New Amsterdam, 3,610,430 M cubic feet.

Q. The Central Union?

A. 2,841,117 M cubic feet. Standard Gas Light 2,255,786 M cubic feet.

Q. What is that figure?

A. 2,255,786 M cubic feet.

Q. Where did you get that figure from?

A. I took that directly from the report to the Public Service Commission, Standard Gas Light Company 31892
report, 1918.

Q. For the Northern Union what are the figures?

A. The Northern Union, 1,878,682 M cubic feet. New York Mutual I think you skipped; do you still want that?

Q. Did you include Westchester, First District?

A. Yes, Westchester, First District is 97,090 M cubic feet.

Q. New York Mutual?

A. New York Mutual is 1,789,012 M cubic feet.

Q. Is that all?

A. I believe that is all.

Q. On this loss of volume item of 91,909 M cubic 31893
feet on Exhibit AA125, what figure for loss of volume for the New York Mutual during 1918 have you included in that total?

A. 13,589 M cubic feet.

Q. Was that taken by you from a letter dated July 29, 1919, addressed by the Mutual Company to the Public Service Commission?

A. No, sir, I took that from an additional note that was in the New York Mutual report for 1918.

Q. Well it came from the company?

A. I don't know. This note was a typewritten note

attached to the report. It was not a letter, so far as I remember.

Q. Did not the same letter also show, and the same note also show a corresponding correction in the quantity of gas made, so as to include the quantity reported at "Loss in volume" which was omitted from the annual report made during the year?

A. To the best of my knowledge, no.

Q. Did you see this letter which was annexed to the report (handing witness paper)?

A. Annexed to the report? No, sir.

31895 Mr. Chambers: I object to that. It was not on that.

The Witness: I did not think there was any letter annexed to the report.

Q. Well, part of the report?

Mr. Chambers: No, now you know, Judge Ransom, that is not a part of the report.

Mr. Ransom: I certainly do know that it is part of the folder which was produced here in connection with the report.

Mr. Chambers: Well, that is different; part of the correspondence.

31896 Mr. Ransom: It is a letter from the New York Mutual Gas Light Company dated July 29, 1919, to the Secretary of the Public Service Commission, answering certain inquiries regarding the report to the Commission, dated December 31, 1918.

Q. In examining the reports, did you at all take into account these letters which had been subsequently exchanged between the Commission and the Company, giving additional details or corrected information?

A. No, I did not take them into account. I read some of them, but they did not seem to affect the report other than the way the notes were attached, and I

was informed by some one in the Commission there, in the office, that they attached notes making the changes that the letters suggested always, so that the reports were always supposed to be up to date; so I did not bother with the correspondence.

Q. Well, the gross make of the New York Mutual Company, of course, would be the total sold by it plus its loss in volume, would it not; total distributed, plus loss in volume, that would be its gross make?

A. I don't know.

Mr. Chambers: Now, I wish counsel would stand back. I cannot hear what he said. 31898

The Master: Yes, I will ask him to speak so that you can hear.

Q. Is that not true?

A. Well, it may be true, but I am not concerned with it.

Q. Do you want to stand on the accuracy of this table as prepared by you?

A. I do.

Q. In view of the correction made by the letter of July 29, 1919?

Mr. Chambers: I object to that. It is not a correction.

Mr. Ransom: It surely is. 31899

The Master: I will allow it.

Mr. Chambers: Exception.

Q. Should not the total quantity made during the year 1918 by the Consolidated system be shown on your exhibit as 33,140,972,600, or 972,000 plus?

A. As I stated before, I took my value listed in the table for 1918, and the item, "Made during year" directly from Table 151.

Mr. Ransom: Cannot the Westchester report, which you have offered in evidence, Mr. Chambers, and which is one of the exhibits here, be produced in court?

Mr. Chambers: What is that?

Mr. Ransom: The Westchester report. It is not here.

Mr. Chambers: Isn't it?

Mr. Ransom: It is one of your exhibits. I need it for cross-examination and it cannot be found.

Mr. Chambers: Have you looked for it?

Mr. Ransom: Well, my assistant has.

Mr. Chambers: It is supposed to be here. Have you called for it? What year?

Mr. Ransom: 1918.

31901 Mr. Chambers: Try the Master's desk; there are some on the desk.

The Master: The Westchester report was just those typewritten sheets.

Mr. Chambers: Somebody has got it here. They had it last night, did they not?

Mr. Ransom: It was here yesterday.

Mr. Chambers: These have not been taken away.

Mr. Ransom: Well, I will have to pass that up, because that error, of course, runs right through the whole "Gas Unaccounted For" and the "Total Delivered to Mains," and so on.

31902 Q. Now, will you give me the quantities which you have taken for each of the companies, in computing the sales to the public during the year 1913, at 27,498,111,200 cubic feet?

A. I have dropped those last ciphers.

Q. Yes, you dropped that last. What totals make up your figures for 1913?

A. For the Consolidated Gas Company, sold to the public 1913, 16,553,736 M cubic feet. For Astoria Light, Heat & Power Company, 1913, 151 M cubic feet. For New Amsterdam, 3,102,666 M cubic feet. For Central Union, 2,521,795 M cubic feet. For

Standard Gas Light, 2,033,200 M cubic feet. For New York Mutual 1,816,219 M cubic feet. For Northern Union 1,402,447 M cubic feet. For Westchester, 68,116 M cubic feet.

Q. What figure did you give for the New Amsterdam?

A. 3,102,666 M cubic feet.

Q. Well, then, apparently you have taken all of these figures very roughly?

A. I have dropped three ciphers.

Q. But you have dropped hundreds of thousands; not merely thousands nor tens of thousands, but hundreds of thousands; or added hundreds of thousands? 31904

A. No, to the best of my knowledge I have not.

The Master: Not of M's, but of cubic feet, you have.

Mr. Ransom: Of thousands of cubic feet. All these figures are in thousand cubic feet.

The Witness: Thousand cubic feet.

The Master: Well, he has not dropped hundreds of thousands of M's; he has apparently dropped hundreds of M's, which would make hundreds of thousand cubic feet.

The Witness: I dropped three decimal places.

The Master: That is hundreds. 31905

The Witness: That is one thousand, one M cubic feet.

The Master: Yes.

Mr. Ransom: Have you found that Westchester report for 1913?

The Master: I thought I saw Mr. Goetz had the Westchester report.

Mr. Goetz: Yes, I have got the Westchester report (producing report).

Q. Where do you find that figure in the Westchester report?

A. For what year?

Q. For 1913?

A. I find it in the total (indicating to Master), 68,116 M cubic feet, dropping the last three ciphers.

Q. Do you include in your "Sales to the Public" in all instances the gas sold for street lighting and municipal buildings?

A. Yes, sir, if it is shown separately. Anything excepting gas sold to other companies is ultimately sold to the public.

Q. Will you let us use your working papers on this in checking this exhibit?

31907 A. Why, certainly. You do not want Table 151 also, do you? I have a copy of that.

Mr. Goetz: You have the details of that?

Q. Have you the details of 151?

A. Yes (producing paper). Of 151?

Q. Yes.

A. No, I did not use them.

Q. Refer to your Exhibit AA125.

A. What table is that, please?

Q. Table 156. The figures shown by you for 1908-1909 as the basis of your deduction, in order to determine the amount delivered to the mains and sold to the public, from that you compute the used and sold, total

31908 used and sold, and total unaccounted for, and the total percentage of unaccounted for?

A. Yes, sir.

Q. Did you include in that the quantity of gas bought in that year or those two years by the New Amsterdam Company from the Newtown Gas Company, as shown by the Annual Report; for example, page 34 of the 1908 Report?

A. No, sir. In what item did you mean that I included it?

Q. In any of these items, in any of these figures for 1908-1909, on which you compute the total sold to the

public, the total used and sold, the total unaccounted for and the percentage of unaccounted for in gas delivered to the mains. Did you take into account the quantity received by the New Amsterdam Company from the Newtown Gas Company in either of those years?

The Master: Did you include that, or was it a duplicate item?

The Witness: No, I did not include that directly, as he stated it.

Q. Did you include it at all?

A. That would not come directly under any heading on the table, because it is not sold to the public, but sold to another company. 31910

The Master: It was purchased from another company, was it not?

Q. It was purchased from another company not in the System. How can you say you have an accurate computation of the amount delivered to the mains, determined by this deduction which you have made, or a correct computation of the total used and sold or of the unaccounted for, or of the percentage of unaccounted for, when you have left out of consideration altogether the quantities of gas which in those years were purchased from a company outside of the System? 31911

Mr. Chambers: I object to that as argumentative.

The Master: Overruled.

Mr. Chambers: Exception.

A. That question was not for me to decide, in the first place. I took merely the companies indicated to me by Mr. Hine and I found the data and the reports which would properly go under the headings given to me by Mr. Hine, and made up the table therefrom.

Q. But you did find in both of these annual reports under the heading in one instance of Purchased Gas

in 1908 and Gas sold to or Bought from Other Gas Corporations, quantities shown on pages 34 and 37 respectively of the 1908 and 1909 Reports of Gas Purchased from the Newtown Gas Company, which was outside the System?

A. I did not find that; no, sir.

Q. You do find it now?

A. I assume that there are some figures there, yes.

Q. In both reports?

A. Yes, sir; I assume there are some figures in both reports.

31913 Q. So your percentages of unaccounted for and your total of unaccounted for, and your figures on delivered to mains, the totals used and sold for those two years, would be incorrect to that extent?

A. The heading of this table, as I understand it, says, "Gas Production and Sales of the Consolidated System."

Q. Yes.

A. Now, probably it is not a matter for me to determine, but I do not see that "purchases" come under that heading.

Q. Well, that gas was either sold or unaccounted for, was it?

31914 A. Well, if it is sold then I have it. If it was sold by the companies, then it appears in the figures "Sold to the Public."

Q. But it is in the unaccounted for, because you have understated the total quantity which went into the mains? Yes or no?

The Master: He is thinking about it.

Q. As you have shown here—

The Master: Wait a minute. He is going to answer the question.

A. I believe that for the Consolidated System I have stated it correctly as this table is supposed to be made up.

Q. But this gas which they purchased from the Newtown Gas Company went into the mains of the Consolidated system, and hence becomes a part of the total that has to be taken into account as delivered to mains, and the balance over and above the sold and used remains unaccounted for.

A. That may be. Could I see that report again that you showed me?

Q. Yes (handing witness).

A. The 1908 amount given here is 2,941 M cubic feet. The total in 1908 delivered to mains is 24,255,224 M cubic feet, and this is therefore 2 parts 31916
in 25,000. So if there is an error, for which I am not responsible as I acted under direction, at least it is a tiny negligible error.

Q. An error of 2,000,000 cubic feet?

A. Yes, but this is—

Q. Over 2,000,000; two million and a half.

A. Yes, but 2,000 M cubic feet out of 24,000,000 M cubic feet, that is 2 parts in 25,000.

Q. You heard Mr. Goldthwaite's evidence on cross-examination this morning, did you?

A. Why, I just heard part of it. I could not hear Mr. Goetz talking; I was away back in the room.

Q. In general did you use these totals on this Table 31917
156 for the Consolidated System in the same way that he did with the corresponding exhibits for the Consolidated alone? Two tables were made up in the same way.

A. They are made up in the same general form, I believe, although I have not examined that closely enough to swear to it.

Mr. Ransom: I think some of these things are so intricate that until I have had a chance to go over the working papers and have had them checked by the accountants I cannot use time profitably.

31918

The Master: All right, the witness may step down. Do you want to cross-examine Mr. Frank?

Mr. Chambers: Is that all? He is suspending his cross-examination just for that?

Mr. Ransom: Until I have had a chance to look over these.

Mr. Chambers: How often is he going to do this? I object. I think he ought to finish.

The Master: Are you ready to go ahead with Mr. Frank? I gave you weeks and months to look over their exhibits and I am giving them hours.

31919

Mr. Chambers: Before I call Mr. Frank, I will call Mr. Lynch.

In regard to this letter of July 29th, 1919, from the vice president of the New York Mutual Gas Light Company, to Mr. Walker, Secretary of the Public Service Commission, I would like to say there is some doubt as to whether that is a supplement or addition to the sworn report of that company. There is some doubt in my mind as to whether that is part of that report. It is a letter and it is unsworn and was sent in after the report, which was under oath, was sent in; but if there is any doubt in the Court's mind we would be glad to offer that slight correction to that table.

31920

Mr. Ransom: It makes a very substantial difference in the figures all the way through.

Mr. Chambers: It makes no difference; it does not amount to anything.

The Master: Then why don't you leave it alone? I am going to take it as showing the correct situation. There is no doubt in my mind that there were 13,000,000 additional feet there to be accounted for.

Mr. Ransom: The Public Service Commission from this letter put one slip in the report and did not put the other.

31921

The Master: Then evidently there was an error there in omitting that. If you think it is worth while correcting, why, go ahead and do it.

Mr. Chambers: We want it correct, that is all.

The Master: Then you will have to recast all your other tables.

Mr. Chambers: Why, no. We will correct them in a minute?

The Master: I do not care. Go ahead with Mr. Lynch.

Mr. Ransom: Let us have the letter marked in evidence.

31922

The Master: It is read in, that part.

Mr. Chambers: It is read in. Was it read in in full?

The Master: Oh, not all those figures. It was read in.

PATRICK A. LYNCH, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

31923

Q. Mr. Lynch, where are you employed?

A. In the Department of Taxes and Assessments?

Q. Of the City of New York?

A. Of the City of New York; yes, sir.

Q. And you have been employed there some time, haven't you?

A. Twelve years.

Q. Did you at the request of the defendants or at somebody's request go through the records of your department?

A. Yes, sir.

31924 Patrick A. Lynch, Direct.

Q. And find the applications made by the Consolidated Gas Company for correction and reduction of assessed valuation of real estate?

A. Yes, sir.

Q. And have you produced all you found here?

A. Yes, sir.

Q. And these applications are the original applications made by the company, on file with your department?

A. Yes, sir.

Q. I show you an application which you produced and ask you what that is (handing witness).

31925 A. It is an application for the reduction of the assessed valuation on that certain block and lot number.

Q. On what block and lot?

A. That would be Block 1682, Lot 11.

The Master: For what year?

The Witness: For the year 1907.

Mr. Chambers: I offer this application, which is dated, or sworn to, on March 27, 1907, by Lewis B. Gawtry, before a Notary Public, as to Lot 11, Block 1682.

Mr. Ransom: I object to this as incompetent, immaterial and irrelevant.

31926 The Master: What is it offered as proof of?

Mr. Chambers: An admission against interest.

The Master: But of what?

Mr. Chambers: On the value of the land. I think I better read this to show you how they go.

The Master: No, let me look at it.

Mr. Ransom: We offered months ago certain of these applications and the defendants objected to them.

Mr. Chambers: You cannot offer a self-serving declaration.

31927

Mr. Ransom: There is nothing self-serving about it. Your Honor having sustained their objection months ago to the offer of similar matters, clearly now, months afterwards, you cannot receive them. They have no bearing on any issue in the case anyway.

Mr. O'Brien: Well, they have a heavy bearing.

Mr. Ransom: They want to try this case in 1907, and not in 1920.

Mr. O'Brien: Pretty soon you will be quoting Mr. Masten on this situation, that the sworn statement of an officer of the company is only 31928
in the nature of a pleading. That is another ingenious way of getting around an oath.

The Master: Have you proved the value that the deputy gave on it.

Mr. Chambers: Yes.

The Master: Then how can you now prove that it was not worth what you said it was worth?

Mr. Chambers: This is not offered for that, this is offered as an admission by the company that the value that the Deputy Tax Commission placed upon the property was more than its real value.

The Master: I know, but you offered the proof 31929
of what you said was its real value.

Mr. Chambers: I am not claiming that this is its real value, but I am showing that the company said our value is too high. How can there be any hesitancy in your mind. It is an admission against interest.

The Master: An admission against interest is for the purpose of proving something, isn't it?

Mr. Chambers: No, no, it is for the purpose of estopping them from ever claiming that our value was too low.

31930

The Master: Too low?

Mr. Chambers: Yes. They will try to show undoubtedly that the value that these Deputy Tax Commissioners placed was too low, that it should have been higher.

The Master: For the land? All right, if they try to show that I will let you offer this in evidence, but not until they do.

Mr. Chambers: Well, it is competent now.

The Master: No, it is not; I will not take it.

Mr. Chambers: But they have already read the testimony as to the value of that property,

31931

I had forgotten that.

The Master: What property?

Mr. O'Brien: Oh, they called the man that came from the graveyard, Mr. Preiss, the man that committed suicide.

Mr. Chambers: This very property, they have offered proof now as to the value of this very property.

The Master: What value did they put on it, do you know?

Mr. Goetz: Which year?

Mr. Chambers: 1907.

Mr. Ransom: Preiss valued the land in 1905

31932

or 1906.

The Master: It must have been before 1907.

Mr. Ransom: Yes, the case was over.

The Master: If you had not offered the proof of a deputy as to what he thought it was worth, and you wanted to rely on their statement of what it was worth, I should have allowed it; but you have proved what it was worth. I am not going to let you prove that it was less than what he said it was worth.

31933

Mr. Chambers: Just stop and think a minute what you are doing. I have offered evidence as to the value of this piece of property.

The Master: $500,000 you say it is.

Mr. Chambers: Whatever we say it is. Now, here is a document sworn to by the Company in which they say that it is not worth as much as that.

The Master: But how does that affect your proof, that does not change your proof.

Mr. Chambers: That shows that our valuation at least is not too low, by their own admission.

31934

The Master: What are you going to rest on, their claim?

Mr. Chambers: It corroborates our valuation to that extent. I am going to rest on the value we prove.

The Master: If they don't take issue on it why should you put in anything more. I won't take it now. If the complainant attempts in any way to contest the value you place on it I will let you put it in.

Mr. Chambers: So far you would not let me prove by the Deputy Tax Commissioners the value of the two gas holders.

31935

The Master: No.

Mr. Chambers: In this document that I offer the company has sworn under oath that the improvements—

Mr. Ransom: I object to the reading of this document into the record.

Mr. Chambers: I think I have a right to read it.

The Master: No, you haven't the right. I have read what it says. You are offering it as an admission against them as to the value.

31936

Mr. Chambers: Yes.

The Master: I won't receive it. I will let you mark it for identification. Their claim is that for taxing purposes those holders added no value to that land, but they don't estop themselves to the point that the holders had no value. That is an entirely different proposition.

Mr. Chambers: Now, your Honor, you don't read this right. They say they add nothing to the amount for which the property would sell under ordinary circumstances. They don't say for tax purposes.

31937

The Master: Well, that is what it means. I won't take it.

Mr. Chambers: Just read it, that last paragraph again.

The Master: I am going to read it all, and it will get in the record. Then I am not going to allow it in.

Mr. O'Brien: Don't get excited about it, or be provoked.

The Master: I am not excited nor am I provoked, I am ruling. The claim made by the Gas Company is in the first place that the value fixed by the Tax Commissioners is too high for the

31938

land unimproved. They then say that the improvements consist of two gas holders, "used exclusively in connection with the manufacture of illuminating gas and are of no value for any other purpose." That is their point, that is their claim.

Mr. Chambers: Read the rest.

The Master (reading): "And they add nothing to the amount for which the property would sell under ordinary circumstances." And, they are quite correct about it, undoubtedly, but that is no statement or admission against that interest.

31939

that the holders use, as they say, in connection with the manufacture of illuminating gas, had no value.

Mr. Chambers: All right, enough is in the record, I am satisfied. I will take an exception.

Mr. O'Brien: I join in that exception.

The Master: You may mark it for identification. If they attempt at some time in this case to show that your land value is too low, I will let you put that in as an admission against interest on the question of land value.

Paper marked Defendants' Exhibit AA141 for identification.

31940

Mr. O'Brien: It is a good thing there is no law against thinking. I don't know what we will ever do if they invent some device that gives one man a chance to see through another man's mind.

The Master: I haven't the power to commit you for contempt, anyway, so you can think anything you like about me.

Mr. Chambers: I don't get a chance to reply to all these wild statements of Ransom's. When Ransom offered his application to reduce the assessments in 1918, if that was the year, the gas company at that time said—they gave a list of all the property, and the assessed valuation with 31941 the improvements on it, and then they said that the value of the property should be the assessed valuation without the improvements. In the affidavit that he offered was a long harangue about they were not making and had not made for years six per cent. For that reason and therefore it was a self-serving declaration.

The Master: The trouble is that you had drawn out the fact that they had made certain claims, and they had a right to show the claims.

Mr. Chambers: You ruled that out as a self-serving declaration.

The Master: I allowed enough of it in to show what the claim was, if I remember. I remember permitting part of it to be read in.

Mr. Ransom: What you did not allow us to show was that the Tax Board had at that time determined the question that is here, namely, that there was an impairment of earnings, and that this property was tied up in the gas business, on which the State did not permit adequate earnings.

31943 The Master: I limited the part that I allowed in, anyhow.

Mr. Chambers: He is saying that he offered the very same kind of record. I just wanted to answer it on the record.

Mr. Ransom: I want to serve notice right now on the Attorney General, as I have before, that I want those tax reports which he had one day here in court. I would like to have them kept here for some days, because I shall want to use them soon.

Mr. Chambers: What tax reports?

Mr. Ransom: The tax reports which you pro-

31944 duced, particularly Schedule S that you had here one day, and that I asked you to keep here.

The Master: You can get them very easily by serving notice.

Mr. Chambers: I have them in my possession and shall keep them until the close of the trial, unless somebody swipes them over in the office, which may happen.

Q. I show you another paper produced by you from the files of the Tax Department of the City. That is an application for a reduction of taxes?

A. Yes, sir.

31945

The Master: For what year?

Mr. Chambers: For 1908.

The Master: By this complainant company?

Mr. Chambers: Yes.

The Master: Mark it for identification before you go any further.

Mr. Chambers: It affects Block 1682, Lot 11.

The Master: Mark it for identification.

Paper marked Defendants' Exhibit AA142 for identification.

The Master: Do you offer it in evidence?

Mr. Chambers: Yes.

31946

Mr. Ransom: I object to it on the grounds previously stated. It is an effort to lumber up this record with ancient history.

The Master: It is practically the same kind of paper as you offered for 1917. Does it affect the same lot?

Mr. Chambers: Yes.

The Master: It is practically the same.

Mr. Chambers: Substantially the same.

The Master: The objection is sustained upon the same ground. If the complainant undertakes to challenge your proof as to value I will let you offer it again as an admission against interest.

31947

Mr. Chambers: Exception.

Mr. O'Brien: As I understand it, your Honor does not rule that an admission made as to value is inadmissible here, but because of the peculiar verbiage in which this statement is made, that it is not an admission as to value?

The Master: There are two branches to that paper. One is affecting the land. I say that you cannot offer an admission in contradiction of your own witness, any more than you can call another witness to contradict your own witness.

31948 Mr. O'Brien: Right on that point, will you hear me a minute? Take the case that frequently occurs in real estate condemnation proceedings, where you call two experts and they have different views—

The Master: That is different.

Mr. O'Brien: One confirms the other, because it includes the other, but one estimate is less than the other.

The Master: That is different: that is not a contradiction. It simply means that the estimates are higher and lower. This is offered in con-

31949 tradiction of your witness.

Mr. Chambers: Oh, no, no, no, don't put that on the record as coming from my side of the house.

The Master: Well, you do.

Mr. Chambers: No. I still submit that our valuation was correct. They challenged it on cross-examination for one thing.

The Master: I say it is immaterial until they challenge it by proof.

Mr. Chambers: I say it corroborates our testimony, for one thing.

The Master: I say it does not.

31950 Mr. Chambers: I am satisfied—I am not satisfied with your ruling—it is erroneous, but all I can do is to have it marked for identification and claim I am correct and take an exception. I think if you thought for a minute you would see—

The Master: You may be absolutely right about it, and yet it would be an error that would be perfectly harmless, because if they don't attack your value and concede it, you have all you want.

31951

Mr. O'Brien: Is it because of the language they use there, that it is not a direct admission.

The Master: Yes, it is a limited claim.

Mr. Chambers: Ask him now if he is going to contest that valuation.

The Master: What difference does it make?

Mr. O'Brien: You frequently asked us across the board—

The Master: I will ask him. Are you going to challenge the land value as they have proven it?

Mr. Ransom: Our view is that we are not under the necessity of proving the value of our 31952
property for those earlier years.

The Master: Sometimes you are worse than Mr. O'Brien. I ask you, are you going to contest the value that they have placed on this property?

Mr. Ransom: I don't know that I shall say at this time. We are trying this case in the present, not in 1907 or 1908. We are not obliged in this case to prove the full value of our property for all those years.

The Master: Who said you were? I was asking you a perfectly simple question. Assuming all that you have said, and assuming everything 31953
else that you may not have said, are you going to contest the value that the Deputy Tax Commissioner put on this land for 1907 and 1908?

Mr. Ransom: I do not expect to offer any further evidence on that point. My point of view on that is this: I do not believe that your Honor has any right or any reason or any occasion to make a finding as to the value of this real estate in 1907 and 1908. I cannot imagine any set of circumstances pertaining to this case—

Mr. O'Brien: Why did you bring the graveyard dead here, and put Preiss' testimony in the record?

The Master: Mr. O'Brien, I give you warning once more that every minute we waste on side talk leads me closer to evening sessions which we want to avoid.

Mr. Ransom: If it should develop—

The Master: I know you are not afraid of night sessions, but it brings me nearer to the date when I have reservations for Cuba, and if
31955 that time arrives this case will go over until I get back.

Mr. Ransom: I want to make a statement.

The Master: You may make it, but I have given you the intimation that that is what is going to happen.

Mr. Ransom: If your Honor should become of the opinion that at the request of these defendants you are going to undertake to make a finding as to the value of property in 1907 and 1908, then we would be confronted with a different situation. I cannot conceive that you will do any such thing.

31956 Mr. Chambers: He offered the value of this property back in 1905 anyway, reading the testimony of dead people as to the value of mains as of that date.

The Master: Is there anything else you want with Mr. Lynch? He is not interested in this discussion.

Mr. Chambers: I did not bring this up and delay the case.

Q. I show you another paper. Is that an original paper, an application of the Consolidated Gas Company to reduce an assessment?

A. Yes, sir.

Q. Affecting Block 689, Lot 17, for the year 1915?
A. Yes, sir.

The Master: Mark it for identification.

Paper marked Defendants' Exhibit AA143 for identification.

The Master: Is that offered in evidence, Mr. Chambers?

Mr. Chambers: Yes, sir.

The Master: Do you object to this?

Mr. Ransom: I object to it on the grounds previously indicated.

The Master: Well, you had better look at 31958
that.

Mr. Ransom: This is one of the properties that the City took.

The Master: That is what you say there.

Mr. Ransom: The City grabbed the property and took it away and put it out of business and has not paid for it since.

The Master: You had better look at it and see if you want to press your objection.

Mr. Ransom: May I just look at it?

The Master: You don't complain about the land value at all there.

Mr. Ransom: I will withdraw my objection 31959
to that.

The Master: If you want that marked, Mr. Chambers, it will be received in evidence.

Paper received in evidence and marked Defendants' Exhibit AA143.

Mr. Chambers: This affects Block 689, Lot 17. The assessed valuation for 1915 was $440,000 on the land, total $465,000. This says: "The improvements upon this block have been removed except the shells of the buildings.

which add nothing to the value of the land. The undersigned represents that it is the owner of the above-described property and claims to be aggrieved by the aforesaid assessed valuation and makes application to the Commissioners of Taxes and Assessments to have the same reduced and corrected, and asks that the assessed value of said premises for the year 1915 be fixed at $440,000."

Mr. Ransom: May I also read from this exhibit the statement of P. J. Cronin, Deputy Tax
31961 Commissioner, to the Commissioners of Taxes and Assessments, as follow:

"Objection on buildings only; factor is low; these buildings are still on this lot and could be used for storage purposes; recommend the confirmation."

Q. I show you another paper affecting Lot 12, Block 690, for the year 1915. Is that an original application filed with the Tax Department by the Consolidated Gas Company to reduce the assessment?

A. Yes, sir.

Mr. Chambers: I offer this paper in evidence, sworn to by Mr. Carter for the Consolidated
31962 Gas Company.

Mr. Ransom: This is another of these properties involved in that condemnation proceeding.

The Master: Have you any objection to the paper?

Mr. Ransom: I have no objection.

Paper received in evidence and marked Defendants' Exhibit AA144.

Mr. Chambers: Since I am going to let these papers go back, I will read from some of them:

"Block 690, Lot 12. Assessed valuation, 1915, land $310,000, total $380,000."

A little further down it says: "Is the objection based on the valuation of the land or the building? On the valuation of the improvements. The improvements formerly upon this property, consisting of a valve house, boiler house and two gas holders, have been removed. The undersigned represents that it is the owner of the above-described property and claims to be aggrieved by the aforesaid valuation and makes application to the Commissioners of Taxes and 31964
Assessments to have same reviewed and corrected, and asks that the assessed valuation for the year 1915 be fixed at $300,000." Verified by Mr. R. A. Carter, November 12, 1914.

On the back of it: "Objections on improvements only. These improvements have already been removed, consisting of valve house, boiler house and two gas holders. Recommend that the assessment be fixed at land value. These improvements were removed after October 1, 1914. P. J. Cronin, Deputy Tax Commissioner."

Mr. Ransom: Which again confirms Mr. Alrich.

31965

Q. I now show you another paper and ask you if that is an application by the Consolidated Gas Company, produced from your files, to reduce an assessment on various pieces of property?

A. For 1916; yes, sir.

Mr. Chambers: I now offer this paper in evidence, it being an application by the Consolidated Gas Company to reduce assessments on the following pieces of property—

The Master: Well, various pieces of property.

31966

Mr. Chambers: Various pieces. It is verified by R. A. Carter, vice-president of the Consolidated Gas Company, December 15, 1915.

Mr. Ransom: Do you offer it?

Mr. Chambers: Yes, certainly.

The Master: Is there any objection to it?

Mr. Ransom: I do not think that there is.

Marked Defendants' Exhibit AA145.

Mr. Chambers: In this paper I have just offered—

Mr. Ransom: I object to taking up time reading these papers.

31967

Mr. Ransom: You ought to give copies of it to us.

Mr. Chambers: I will read it in for both sides.

Mr. Ransom: I object to it.

The Master: Yes, have a copy made and have it certified as a correct copy.

Mr. O'Brien: Judge Ransom seems to put an epitaph on this. He did not object to it.

The Master: When I try a case I never go in and try it on two theories; I always go in and try it on the theory I think is right. When my opponent offers in a lot that I think is immaterial. I do not need it and do not go over it. I take my chances.

31968

Mr. Chambers: Yes, but when you do that you like to get enough evidence in to support your theory. Whether the Court agrees with you or not you do not care. That is my situation. I do not care if you let us put in the evidence here supporting our theory. I have got one single theory here and I am willing to go right straight through.

The Master: I am going to let you put it in.

Mr. Ransom: By competent proof.

Mr. Chambers: I want enough to substantiate my theory. Whether you let it in or not I do not care.

Mr. Ransom: You have to offer competent proof, though.

Mr. Chambers: I have not asked him yet to take the common-law proof as you did.

Q. I show you another paper, an application by the Consolidated Gas Company to your Board for revision of assessed valuation of real estate of 1916.

A. Yes.

Q. That is an original application.

A. Yes. 31970

Q. Affecting Block 239, Lot 5?

A. Yes.

Mr. Chambers: I offer this in evidence. This is in reference to Hester Street.

Mr. Ransom: I do not know what this is. This is not filled out or verified; it is not anything that I can see. I object to it.

The Master: Sustained on the ground that it is not anything; it is a memorandum of some kind.

Mr. Chambers: There is the name of the Consolidated Company.

Mr. Ransom: There is no request by the company for anything. 31971

The Witness: This application would be heard in conjunction with the application on Block 239, Lot 1, of the same year. The data on that will cover this.

Mr. Chambers: I offer in connection with Exhibit AA145—

The Master: No, I will not take it in connection with anything. It is apparently some method pursued by the department for keeping track of

31972

separate lots which were included in one application. It is sort of an index blank.

Mr. Chambers: I will just have it marked for identification.

Mr. Ransom: What is the use of marking it for identification?

Mr. Chambers: It shows that I was willing to have the whole application in.

The Master: The whole application is in.

Marked Defendants' Exhibit No. AA146 for identification.

Mr. Chambers: Here is another one affecting Block 953, Lot 1; I ask that that be marked for identification.

31973

Mr. Ransom: I object to those that are not filled out.

Marked Defendants' Exhibit AA147 for identification.

Mr. Chambers: I offer the application as to Block 978, Lot 6, for identification.

Marked Defendants' Exhibit AA148 for Identification.

Mr. Chambers: Block 979, Lot 1.

Marked Defendants' Exhibit AA149 for identification.

Mr. Chambers: Block 987, Lot 37.

31974

Marked Defendants' Exhibit AA150 for identification.

Mr. Chambers: Block 988, Lot 1—all of the same year.

Marked Defendants' Exhibit AA151 for identification.

Mr. Ransom: I object to the marking, because they are not signed, are not filled out, and it is not an application by the Consolidated Gas Company. It is merely some record made by the Department for their convenience.

31975

The Master: Overruled.

Mr. Ransom: Nothing in any way binding on the complainant.

Mr. Chambers: Block 1089, Lot 1.

Marked Defendant's Exhibit AA152 for identification.

Mr. Chambers: Block 1092, Lot 7.

Marked Defendants' Exhibit AA153 for identification.

Mr. Chambers: Block 1093, Lot 9.

Marked Defendants' Exhibit AA154 for identification.

Mr. Chambers: Block 7175, Lot 18. 31976

Marked Defendants' Exhibit AA155 for identification.

Mr. Chambers: Block 1457, Lot 6.

Marked Defendants' Exhibit AA156 for identification.

Mr. Chambers: Block 1670, Lot 1.

Marked Defendants' Exhibit AA157 for identification.

Mr. Chambers: Block 1998, Lot 50.

Marked Defendants' Exhibit AA158 for identification.

Mr. Chambers: Block 1999, Lot 1.

Marked Defendant's Exhibit AA159 for identification. 31977

Mr. Chambers: Block 2108, Lot 23.

Marked Defendants' Exhibit AA160 for identification.

Mr. Chambers: Block 1157, Lot 1.

Marked Defendants' Exhibit AA161 for identification.

Mr. Chambers: I show you paper dated January 31, 1916. Is that an application to reduce assessed valuation?

The Witness: Yes, in Block 1157, Lot 1.

31978 Patrick A. Lynch, Direct.

Q. Produced from the files of your department?
A. Yes, sir.

Mr. Chambers: I offer this application in evidence, verified by Mr. Gawtry on the 12th day of November, 1915.

The Master: All of these papers Mr. Chambers holds in his hands are original applications produced from the files of your Department?

The Witness: Yes, sir.

Mr. Ransom: All of these I here hold in my hand I object to on the ground they are not ap-
31979 plications in any way made out by the complainant.

The Master: Some of these blank forms?

Mr. Ransom: Yes.

The Master: Then those may be marked for identification.

The following applications were marked for identification:

Block 870, Lot Nos. 47 and 60, marked Defendants' Exhibit AA162 for identification.

Block 952, Lots 7, 30, 33, 34, 35, marked Defendants' Exhibit AA163 for identification.

Block 953, Lot 1, marked Defendants' Ex-
31980 hibit AA164 for identification.

Block 985, Lot 7, marked Defendants' Exhibit AA165 for identification.

Block 982, Lot 13, marked Defendants' Exhibit AA166 for identification.

Block 979, Lot 1, marked Defendants' Exhibit AA167.

Block 978, Lots 1 to 6, marked Defendants' Exhibit AA168.

Block 1092, Lots 7, 38, 38 1/2, 39, marked Defendants' Exhibit AA169 for identification.

31981

Block 951, Lot 35, marked Defendants' Exhibit AA170 for identification.

Block 2108, Lot 23, marked Defendants' Exhibit AA171 for identification.

Block 2123, Lot 49, marked Defendants' Exhibit AA172 for identification.

Block 1999, Lot 1, marked Defendants' Exhibit AA173.

Block 1683, Lot 18, marked Defendants' Exhibit AA174.

Block 1642, Lot 33, marked Defendants' Exhibit AA175 for identification.

Block 1455, Lot 13, marked Defendants' Exhibit AA176 for identification. 31982

Block 1157, Lot 1, marked Defendants' Exhibit AA177.

Block 1998, Lot 50, marked Defendants' Exhibit AA178 for identification.

Block 1156, Lots 45 and 46, marked Defendants' Exhibit AA179 for identification.

Block 1107, Lot 7, marked Defendants' Exhibit AA180 for identification.

Block 1093, Lot 9, marked Defendants' Exhibit AA181 for identification.

Block 1089, Lot 1, marked Defendants' Exhibit AA182 for identification. 31983

Block 1028, Lot 38, marked Defendants' Exhibit AA183 for identification.

Block 991, Lot 1, marked Defendants' Exhibit AA184.

Block 989, Lot 1, marked Defendants' Exhibit AA185 for identification.

Block 988, Lot 1, marked Defendants' Exhibit AA186 for identification.

Mr. Ransom: As far as these that are here offered are concerned, I object to them on the

ground that they have no bearing on any issue in the case. They are applications that are based upon inequality rather than any excess.

The Master: I will sustain the objection and have them marked for identification. They affect the land values that you have proven?

Mr. Chambers: They affect some that he has proven in 1918.

The Master: Objection sustained. You may have them marked.

Q. You said that these are all original applications
31985 filed by the Consolidated Gas Company?

A. Yes.

Mr. Chambers: I offer in evidence application affecting Block 1157, Lot 1, sworn to by Mr. Gawtry for the Consolidated Gas Company, November 12th, 1915.

The Master: Objection sustained. They will be marked for identification.

Marked Defendants' Exhibit AA186 1/2 for identification.

Mr. Chambers: Then application affecting Lot 1, Block 1670, sworn to by Mr. R. A. Carter, November 14th, 1917.

31986 Marked Defendants' Exhibit AA187 for identification.

Mr. Chambers: Do you say you did not prove any valuation in 1918?

Mr. Ransom: The defendants brought out 1918 valuations.

Mr. Chambers: No, why not answer the question?

Mr. Ransom: I do not recall that I asked any deputy tax commissioner for 1918 valuations.

31987

Mr. Chambers: Or anybody else?

Mr. Ransom: As to real property?

Mr. Chambers: Yes.

The Master: It does not make any difference; I will not take them.

Mr. Chambers: But he did, if you will recall.

Mr. Ransom: I will take your statement that we did.

Mr. Chambers: Or try to.

Also an application affecting Block 1682, Lot 11, verified by R. A. Carter, November 14th, 1917.

31988

Marked Defendant's Exhibit AA188 for identification.

Mr. Chambers: May it be noted on the record that Mr. Ransom now has the bundle which involves the other gas companies, other than those in the system, the Standard and the Mutual applications for reduction.

Mr. Ransom: Applications produced by your witness.

Mr. Goetz: That is not altogether correct.

Mr. Chambers: What is not altogether correct?

31989

Mr. Goetz: Your statement that we have an application. The first paper I see is not any application at all; it is blank.

Mr. Chambers: Are you sure about that?

Mr. Goetz: It is blank; it is not even signed.

Mr. Chambers: I offer the application as to Lot 5, Block 1704, sworn to by Mr. Carter November 14th, 1917. There may be some papers in there, Mr. Goetz, that are not sworn to, but most of them are applications by the Standard and other companies and are sworn to—most of them.

Mr. Goetz: Some of them.

Mr. Chambers: This paper I am offering is verified by R. A. Carter, November 14th, 1917.

Marked Defendant's Exhibit AA189 for identification.

Mr. Chambers: Also I offer in evidence application affecting Block 1692, Lot 1, verified November 14th, 1917, by R. A. Carter, affecting the 1918 taxes.

Marked Defendants' Exhibit AA190 for identification.

31991 Mr. Chambers: I take an exception to the ruling of the Master insofar as he has refused to allow these papers in evidence here that I have offered—these applications.

Mr. Ransom: Is that all?

Mr. Chambers: That is all.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Have you produced here, Mr. Lynch, so far as you know, all of the applications that were filed with the Board of Taxes and Assessments by the complainant company from 1905 down to the present time?

A. Yes, sir.

31992 Q. Is this one of the originals of the papers which you have produced according to Mr. Chambers' request?

A. Yes, sir, that is one of the originals.

Q. From the records of your department?

A. Yes, sir.

Mr. Ransom: I offer the application verified by R. A. Carter, vice president, November 13, 1918.

Mr. Chambers: Is that the one you offered before?

Mr. Ransom: Yes, the one I offered before.

Mr. Chambers: Well, as to this offer, I say first it has been offered once and been specifically ruled out, and in the second place I repeat what I said before when he attempted to get it in evidence, that it is a self-serving declaration.

Mr. Ransom: And in connection with these other ones that have been put in evidence, I now offer it.

The Master: Do you object to the offer?

Mr. Chambers: Yes; on the ground it is a self-serving declaration.

The Master: Objection sustained. 31994

Mr. Ransom: I offer it on the ground that the defendants have now put in evidence various of these applications and the action of the board. They have called to the stand various deputies who have testified as experts, so-called, in their behalf, and in connection with their testimony and the documents which you have received I offer this.

The Master: Objection sustained.

Mr. Ransom: Exception.

Q. Are you sure you have brought all those applications?

A. I brought all I could find, sir. 31995

Q. You don't know where any of the other ones are?

A. No, sir.

Mr. Chambers: If you have more, I wish you would produce them.

(Witness excused.)

31996 Charles Frank, Cross.

CHARLES FRANK, resumed.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Frank, your exhibit which you call "Cost of Production Storage of Gas by each Station 1906 to 1918," did you personally prepare this?

A. I did not.

Q. Did you personally check it?

A. Not absolutely every figure on it.

Q. Well, to what extent did you check it?

A. Generally by comparing the total of the total

31997 production account in the ledger, the residual revenue account and the duplicate gas charge account, and I personally checked the analyses made by my assistants of a good many of these individual station records.

Q. You took this from the general ledger, or from the operating ledger?

A. Operating ledger.

Q. Look at Schedule 25, for example, of this exhibit, the details of residual expense set forth at the bottom of the page, is that one of the things that you analyzed?

A. What year is that?

Q. 1911.

31998 A. The figures of residual expense on the next to the last line?

Q. Yes.

A. I cannot recollect.

Q. Well, I show you the 1911 operating ledger, page 878 and 877, and I ask you to find the figure which you have set forth. The figure which you have set forth is, for 1911, Total Works Residuals Expense $6,252.03, is it not, for the year 1911? Is that right?

A. It is. That is the total of the account residual expense on this page.

Q. As of what date?

A. It appears to be as of the 30th of June.

Q. What is the figure for the twelve months?

The Master: Let me see that exhibit, will you?

A. There is no total shown here on this page.

Q. On page 878?

A. No, no total shown here.

Q. Well, the figure you have put down is the figure for six months, is it not?

A. It would appear so, yes.

The Master: What is the figure for six 32000 months?

The Master: Well, aren't there any items after that for the balance of the year?

The Witness: Yes, there seem to be.

The Master: Why didn't you add them up?

Q. Well, there are, aren't there, Mr. Frank?

A. Yes, there are.

The Master: Why didn't you add them up?

The Witness: I did not do this work myself: I had to rely upon others.

Q. Isn't it a fact that the total for the year is a very much larger sum?

A. Yes, it would appear to be quite a bit larger. 32001

Q. Namely $13,337.37?

Mr. Clark: I object to Judge Ransom testifying what the figure is.

The Master: Objection overruled.

The Witness: There is a little pencil figure here of that amount.

The Master: Can't you run up that column of figures?

The Witness: It is about that amount.

The Master: All right, go ahead. He says it is about that amount. That is near enough.

Q. Well, isn't that the amount?

A. It is.

Q. Folio 884 of the 1911 ledger, duplicate gas charges. What figure do you find the total there?

The Master: For 1911?

Mr. Ransom: For 1911.

A. The total of that account is $175,703.43 for the year 1911.

Q. And the figure which you have shown in Schedule 25 is $114,558.39?

A. That is the figure on this schedule, yes.

32003 Q. Right straight through this whole—

The Master: Wait a minute. What is the explanation?

The Witness: Duplicate gas charges is composed of residuals used and of gas used.

The Master: What do you mean?

The Witness: And this is the residuals used only.

The Master: Duplicate gas charges includes what?

The Witness: Gas used by the company in its works and in other buildings and credited to this account.

The Master: Yes.

32004 The Witness: And residuals used in manufacture, credited to this account. This is the residual portion of it.

The Master: This is only residuals?

The Witness: Exactly.

The Master: Why didn't you include the gas used?

The Witness: Because I was attempting to get the actual cost of production.

Q. Well, have you done the same thing all the way through?

A. I have.

Q. Every year?

A. Every year.

Q. In no instance does the figure which the books show appear in your schedule 25?

A. In 1918, and maybe in 1917, the method was changed and duplicate gas charges contained only the gas used by the company and excluded the residuals, and they are taken into a separate account.

Q. Did you make that analysis?

A. I might have made one or two, and I asked to have the other men make the others.

Q. In your Exhibit 129, Schedule 23, did you intend that this exhibit as prepared by you should show the various elements making up the cost of manufacture and distribution cost during the different years? 32006

A. It is a copy—

Q. Answer the question. Did you intend to show what it cost to manufacture and distribute gas during those different years?

A. No.

The Master: What did you intend to do?

The Witness: To show what the company apparently considered its costs.

Q. Well, did you intend to show what the company considered its costs? 32007

Mr. Clark: I object to this, your Honor. He has told just what he did, he made a copy of the figures in the book.

The Master: Objection overruled.

Mr. Clark: Exception.

A. The company—

Q. (Interrupting.) Did you intend to show what the company considered to be its costs?

A. Yes.

Q. Do you think you did show it?

A. Yes.

Q. Have you taken various amounts going to make up such costs from various pages of the general ledger bearing titles corresponding with the expense classification set out in your exhibit?

A. Yes.

Q. For example, the amount of $3,684,087.94, representing the expense of gas production during 1918, was taken from page 281?

The Master: What is that figure?

Mr. Ransom: $3,684,087.94.

The Master: Gas production?

32009 Mr. Ransom: Yes. That was taken from page 281 of the general ledger, was it not?

The Witness: I will look (examining book). It was.

Q. The amount for "Works and Station Structures, Repairs," during 1918, amounting to $115,558.70, was taken from page 285?

A. The amount is shown here as $26,894.04 opposite, "Repairs to Works and Station Structures."

Q. That came from page 285?

A. Yes, sir.

Q. Where you found an account under that number?

A. Yes, sir.

32010 The Master: That title.

Q. And so you put it into your exhibit?

A. Yes, sir.

Q. On page 243 you found an account entitled "General Office Supplies and Expenses"?

A. Yes, sir.

Q. In what amount?

A. $102,215.71.

Q. That is the amount appearing on page 243?

A. It is.

Q. And that is the way you made up this whole exhibit, is it?

A. That is the way this exhibit is made up.

Q. You took an amount shown on the pages of the ledger into your amount appearing under that account heading?

A. I did.

Q. Didn't you also find in this same volume on pages 84 and 89 an account entitled, "Taxes," showing taxes for each of the years from 1913 to 1919, inclusive?

By the Master:

Q. You have not included any tax items here, have you?

A. There are no tax items in this schedule whatever. 32012

Q. Why not? Isn't that a cost of production and distribution?

A. The company included the accounts shown in this schedule, transferred the account shown in this schedule to an account in the ledger called "Operating Expenses." It did not transfer those tax charges to that account.

Q. Didn't you find the tax account here just the same as you found the other accounts?

A. I found a tax account in the ledger, yes.

Mr. Clark: This is a supporting schedule to the other schedule which you ruled out.

The Master: This only purports to show part of the cost of making, producing and delivering gas. 32013

Mr. Ransom: The trouble is that they referred to it, as Mr. Hine did, as showing operating expenses.

The Master: I don't care how they referred to it. The fact is that Mr. Frank has made up a statement which includes certain items, and excludes certain other items, one of them being taxes.

Q. Do you want, as an accountant and statistician, to create the impression that taxes are not a proper expense of the gas business?

The Master: The objection sustained.

Q. Didn't you find in these ledgers 4 and 5, on pages 78 and 85, an account showing the amount expended by the company for interest on taxes?

A. There is such an account there.

Q. You did not include any of that?

A. I did not.

The Master: Now, what else is to be excluded?

32015

Q. On pages 90 and 475 of the general ledger—

The Master: That runs through all the years?

The Witness: Yes, sir.

Q. Didn't you find an account entitled, "Renewals and Replacements," showing the amount expended by the company covering renewals and replacements over all these years?

A. There is an account, renewals and replacements, yes, sir.

Q. Did you include any part of that in this exhibit?

A. I did not.

32016

Q. Now, the account, "Repairs of Works, Tools," is a separate and clearly defined account under the uniform system of accounts, isn't it?

A. It is.

Q. Account No. 615?

A. I don't remember the number.

The Master: Isn't that on this statement there?

Mr. Ransom: No. The situation on that is a little different. I want to have it explained.

Q. You give repairs of works tools on your exhibit for 1911, at $14,787.04, do you not?

A. Which exhibit is that on?

Q. Your schedule 23, Exhibit AA-129?

A. For the year 1911, repairs of works, tools, $14,787.04.

Q. Did you take the summary, make up or check this summary of repair accounts for 1909 to 1918?

A. I checked some of it, not all.

Q. I call your attention to the item of repairs of buildings, garage, for 1916, which appears at folio 784 of the 1916 ledger?

The Master: What station?

Mr. Ransom: Repairs to buildings, garage.

A. Repairs to buildings, garage, 1916? 32018

Q. Yes. Is the figure given on your exhibit correct or not?

A. No. The book shows $1,466.01; the exhibit shows $1,446.01.

Q. I call your attention to the item of repairs to meters for 1907. You say that was prepared from the company's ledgers?

The Master: What exhibit is that in?

Mr. Ransom: That is on Schedule 24.

The Master: 1907?

Mr. Ransom: 1907.

Q. I call your attention to folio 645, the closing entry of this account, and ask you whether your summary of repair account is correct in the items and 32019
in the consequent total?

The Master: What are you using now, Schedule 23?

Mr. Ransom: His Schedule 24.

A. $167,000 in the book, $67,000 here.

Q. And you have totalled it as $67,000?

A. Yes, sir.

Q. Your figure is $100,000 off?

A. It would appear so.

Q. I call your attention to "Tools and Implements Except Works Tools," for 1906, shop—your figure

of $5,951.29. Where did you get that? I may be able to help you a little. Hester Street is at folio 593. What do you find for Hester Street?

A. $157.61.

Q. Avenue A is at folio 594. What do you find there?

A. $429.26.

Q. 66th Street is folio 596.

A. $1,514.63.

Q. 114th Street is folio 598.

A. $932.45.

Q. Is that all you include?

32021 A. No. I think Meter Shops is probably included there, too.

Q. The items you have given total $3,033.95, is that right?

A. Yes.

Mr. Clark: Mr. Frank has some working papers which are not here, which show just what that includes. It would probably save time to adjourn now.

The Master: See if you can finish this one item. Is it your contention that he has omitted some items?

Mr. Ransom: This is an instance of the in-

32022 accuracy of their work. It is not possible to check even on the part that we have been able to check. When you take six months instead of a year on operating expenses for one thing, and omit $100,000 on another item, and on another figure—

The Master: We will adjourn to 9:30 Monday morning. Get your working papers up Monday morning, Mr. Frank.

The Witness: All right.

Adjourned to Monday, January 19, 1920, at 9:30 A. M.

Last Complainant's Exhibit 456.

Last Defendants' Exhibit AA-190.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 32023

Before: ABRAHAM S. GILBERT, Special Master.

NEW YORK, January 19, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for Defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 32024
MR. O'BRIEN, of Counsel for Defendant Swann.

CHARLES FRANK, resumed the stand:

CROSS-EXAMINATION CONTINUED BY MR. RANSOM:

Q. Mr. Frank, even as to the items which it purports to cover do you think your Schedule 23, Defendants' Exhibit AA129, is complete for those years, 1906 to 1918? 32025

A. Schedule 23 is Details of Accounts—

Q. No, answer the question. Do you think it is complete even as to the items which it purports to cover, that is leaving out taxes and interest on taxes, renewals and replacements, and the like?

A. I think it is, yes.

Q. Does it include items of expenditure for example which are made in 1917 but which are applicable to the expenses of 1914, 1915 or 1916?

A. Those are included in your books in the adjustment of profit and loss account.

Q. Are they in this statement?

A. They are not in this statement.

Q. Then all of these items of adjustment, these items of expenditure in one year applicable to the expenditures of another year are left out here?

A. Tey are not in this statement.

The Master: Why?

The Witness: This statement shows the figures included in the operating expense account, the accounts in that ledger called "Operating Expenses."

32027 The Master: But the minute you have an adjustment of profit and loss applicable to that expense account, it belongs there and must go there.

The Witness: In the adjustment of these operating expenses it should be—

Q. You went over those things with Mr. Teele?

A. Which things?

Q. These adjustments.

A. I did.

Q. In connection with this Exhibit 367?

A. Yes.

Q. But you left them out of your statement?

A. They are not here; these are unadjusted.

32028 Mr. Ransom: That is all.

The Master: Anything else with Mr. Frank?

Mr. Clark: No. I want to take up again those two exhibits that were left out.

The Master: That were marked for identification?

Mr. Clark: Yes, marked for identification.

The Master: I will keep them out.

Mr. Clark: I would like to bring to your Honor's attention the fact that Mr. Teele in his Exhibit 205 has included the very items that you ruled this out on.

32029

The Master: I am going to keep it out.

Mr. Clark: He in his exhibit has included a great many items—

The Master: He has no profit and loss exhibit anywhere.

Mr. Clark: He shows everything that is included in profit and loss.

The Master: My mind is fixed on it, I won't take it.

Mr. Clark: I don't see why we are not entitled to show these things if they are.

The Master: Whatever may be said in favor of the proposition that a company like the Consolidated Gas Company ought not to have a rate for gas fixed as distinguished from what it makes from electricity— 32030

Mr. Clark: That is not the reason this is put in.

The Master: That is an entirely different proposition. I don't know what the answer to that may be, but I am perfectly clear in my mind that in this particular case all I have to consider is what it costs to make and distribute gas.

Mr. Clark: There is no question about that, we do not claim otherwise.

The Master: You are trying to take their profit and loss statement. 32031

Mr. Clark: We are trying to put it in as a series of exhibits. Mr. Teele has put in non-gas operating revenue and then he has cut it out.

The Master: I won't take it.

Mr. Clark: He has put in several items of non-operating revenue which he afterwards cut out.

The Master: I won't take it.

Mr. Clark: For instance, that contribution to war work. He cut that out. We are doing the same thing in two statements that he does in

32032

one. I don't see what difference there is in it. Another thing, this original schedule on which we base these production expenses—Judge Ransom has attacked Mr. Frank very viciously because production expense does not include a whole lot of things. If this first exhibit was in it would show that this second exhibit is a supporting exhibit to the first exhibit, and shows what the production expenses are on the books of the company.

The Master: You will have to show it in some other way; I won't take that exhibit. Anything

32033 else?

Mr. Clark: No.

The Master: Next witness.

Mr. Clark: I will recall Mr. Carter in regard to some questions about the annual report, but the reports have not arrived yet. They are on the way over.

Mr. Chambers: When I offered some of these exhibits in evidence here today, take for instance Exhibit AA110, I asked leave to substitute photostatic copies for the original so that we could return the originals to the Standard Oil. Those are all made.

32034 The Master: Show them to Judge Ransom.

Mr. Chambers: I would like to substitute and have marked these photostatic copies so as to give the original exhibits back to the Standard Oil. Have you any objection?

Mr. Ransom: The originals are now here?

Mr. Chambers: Yes, they are right here.

Mr. Ransom: We have no objection. You will give us a copy of them?

Mr. Chambers: Yes, I think so. Take Exhibit AA110, consisting of three sheets, I ask that

32035

a photostatic copy be substituted for the original.

Photostatic copy marked Defendants' Exhibit AA110.

I ask that a photostatic copy be substituted for the original of Defendants' Exhibit AA53.

Photostatic copy marked Defendants' Exhibit AA53.

I ask that a photostatic copy be substituted for the original of Exhibit AA77.

Photostatic copy marked Defendants' Exhibit AA77.

I ask that a photostatic copy be substituted for 32036
the original of Defendants' Exhibit AA87.

Photostatic copy marked Defendants' Exhibit AA87.

I ask that a photostatic copy be substituted for the original of Defendants' Exhibit AA74.

Photostatic copy marked Defendants' Exhibit AA74.

I ask that a photostatic copy be substituted for the original of Defendants' Exhibit AA112.

Photostatic copy marked Defendants' Exhibit AA112.

I ask that a photostatic copy be substituted for the original of Defendants' Exhibit AA113. 32037

Photostatic copy marked Defendants' Exhibit AA113.

ROBERT A. CARTER, recalled by the defendants, testified as follows:

DIRECT-EXAMINATION BY MR. CLARK:

Q. Mr Carter, in connection with the annual reports and the accounts that are set up in the general accounting order, we have found some disagreements between what appear to be the book figures and the report figures, and I would like to ask you a few questions about the accounts here, to see whether you can find the figures that appear in the reports on the books
32039 under the different accounts as set out in the accounting order. In the 1917 report, on page 57, you will find salaries and expenses of general officers (handing witness book). What is the amount there?

A. The amount given here is $130,339.05.

Q. Do you know where you could find that on the books of account of the company?

A. May I see Mr. Teele's exhibit? Let us see it for 1918.

Q. That is page 28, I guess you want, Mr. Carter.

Mr. Ransom: That is the 1918, and you are showing him the 1917 report.

32040 Mr. Clark: That is right; I think he is looking at the ledger folio.

A. I find that the corresponding item for 1918 was $133,540.41, and that that appears upon folio 998 of the operating ledger.

The Master: I thought Major Clark was asking you about 1917.

The Witness: Well, we have not any corresponding report here. I am simply trying to identify the item in 1917 which would correspond with the item in the 1918 report, to the Public Serv-

ice Commission, with a summary made up by Mr. Teele for 1918.

The Master: Is the 1917 ledger here?

Mr. Clark: Yes, it is here.

The Witness: Let me look at the 1917 (examines book). The office copy of this report would probably contain the original compilations from which this account appearing in the reports for the year ending December 31, 1917, page 57 of the report, is made up, amounting to $130,339.05.

The Master: What is the title of the account? 32042

The Witness: Salaries and expenses of general officers.

Q. Do you carry any such account in the reports? Do you carry any such account as that?

The Master: Of that exact title.

Mr. Clark: Of that exact title?

A. That combines two items.

The Master: Do you carry an account of that exact title?

The Witness: No, not the exact title; but we do show on page 883 of the operating ledger, salaries, general office, and under the column headed "General Officers" appears as the aggregate of 32043 salaries paid to general officers for the year the sum of $128,291.48.

The Master: So there is $2,000 still to account for.

The Witness: Under the general office supplies and expenses appears expenses-officers, account headed "Officers," the aggregate of the amount for the year being $1,881.44. The aggregate of those two items of $130,172.92. That is $166.13 less than the item appearing in the report for the year 1917 covering those two items.

Q. How would anyone going there to inspect these books check the report on this particular item with your books; how would they find it out?

A. By asking somebody at the office how that amount was made up and having it pointed out to them.

Q. But you cannot tell how it was made up?

A. I am telling you how it was made up now.

Q. It does not come out accurately.

A. It comes out within $166.13 and, as I have stated, the original office report would probably indi-

32045 cate where that item came from.

Q. We do not get that report at the Pupblic Service Commission, do we, Mr. Carter, showing where the item came from?

A. No, because it is grouped under one heading to conform to the Commission's classification.

Q. You do not carry the particular account the Commission sets up in the uniform system of accounts as general officers supplies and expenses?

A. We carry it in two subdivisions of our accounts, and possibly in some other account there is an item which when these accounts were made up was allocated to that particular expense or that particular item in

32046 the Commission's own report, $166.13.

Q. Look at the next item, salaries and expenses of general office clerks. What is that on the 1917 report?

A. Salaries and expenses of general office clerks.

Q. What is the amount on the report, Mr. Carter?

A. The amount given on the report is $211,723.20. That represents—

Q. First do you set up that account on your books in those words?

A. No.

Q. You do not set up the—

A. There is no such account under that particular caption on the books, but there are subdivisions of the salaries account and of the—that is the general office salaries and of the general office expenses, which enables us to report to the Commission the amount expended for salaries and expenses of general office clerks, and the amount given can be checked with our books.

Q. Can you check it now?

A. I cannot without having the original working papers that were used in making up our report, which are available to the Commission, and are at our office 32048
and can be checked by the Commission's representatives if they care to do it.

Q. Without any difficulty?

A. Without any difficulty; and they have been there for seven months and have not yet asked us for anything to enable them to check any amount in these reports.

Q. Who decides just what accounts are to go into these figures that are reported to the Public Service Commission?

A. It is not a question of anybody deciding it. What goes in there is the fact.

Q. Isn't it a matter of judgment? 32049

A. There is no judgment about it. It is just what it purports to be. The salaries and expenses of the general office clerks is not a matter of judgment and not a matter of policy.

Q. Could anyone go to the books and find exactly the same proposition?

A. Pardon me?

Q. Could anyone go to the books and take your various accounts and work out the same figures you have on your Public Service Commission reports?

A. They can, absolutely.

Q. Can you do it?

A. Here?

Q. Yes.

A. No, but I can take your clerks at the Public Service Commission and do it for them.

Q. Why can't you do it here?

Mr. Ransom: I object to the question. They put Mr. Carter on the stand, do not give him any idea about the matter they expect him to testify to, but expect him to have his working papers on matters which they do not disclose.

32051 The Master: Objection sustained.

Q. How could anyone tell without going to some one in the company to find out how they made it up?

A. It is not supposed they should be able to tell without going to the company's office and informing themselves.

The Master: Isn't that within the power of the Public Service Commission to do that very thing?

Mr. Clark: The point is, your Honor, that these companies are supposed to run their books in accordance with accounts set up in the uni-

32052 form system of accounts.

The Master: Well, if they did not do it, why didn't your Public Service Commission stop it?

Mr. Ransom: They have a right to subdivide accounts.

Mr. Clark: Because there are so many companies, we cannot go around to all these companies and tell them to change their accounts.

The Master: That is no excuse. The Public Service Commission ought to have a sufficient staff to check up these accounts and, where they find them inaccurate, make them keep them accurately.

Mr. Clark: I do not think the Public Service Commission should audit the accounts of every company in the city to make sure that their reports agree with their books.

Mr. Ransom: The company has a perfect right to subdivide accounts.

Mr. Clark: We rely upon their sworn report.

The Witness: And it is correct.

The Master: Do not let us waste time on that.

Q. Take line No. 12, miscellaneous general expenses (handing witness book). What is the amount you 32054
find on that line?

A. $278,687.81.

Q. And you find that in the books?

A. Yes, that all can be found in the books.

Q. Can you find that account—that particular account?

A. I think there could not be any such account, because it states on the same line that this is miscellaneous general expense including defensive emergency service, which was kept in a separate account and is a combination of the two, and the books plainly indicate the fact that those two amounts are combined.

Q. Is there an account entitled "Miscellaneous Gen- 32055
eral Expense" on your books?

Mr. Ransom: I object to the question. It appears under the uniform system of accounts that the companies have a right to subdivide accounts, and Exhibit 205 and the corresponding exhibits show the subdivisions. These defendants are not entitled, having put these reports in evidence, now to undertake to impeach them.

Mr. Clark: We are not undertaking to impeach reports, if your Honor please; we are trying to find out whether the assertions of Judge

Ransom that he has followed the uniform system of accounts are correct.

A. It is necessary for the company, in order that it may be able to keep a check upon the expenditures of the various departments, to make subdivisions in the classifications provided by the commission, and it is understood that both the Commission's accounting order and the Public Service Commission's law provide for the company doing that.

Mr. Ransom: As provided in Section 4 of the Order, they may keep subdivisions of accounts
32057 until the Commission otherwise directs.

Q. Do I understand that you do not keep an account called "Miscellaneous General Expenses"?

A. No. I might say that the report form prescribed by the Commission does not conform to the accounting order?

Q. But it does contain a line for the accounts which is set up in the accounting order—all of the accounts which I have furnished you so far today?

A. I am not sure; it is some time since I have checked the matter over for the purpose of determining that.

Q. You have just seen it on the report, miscellan-
32058 eous general expenses?

A. I saw it on the report form.

Q. Yes.

A. I am not sure even now that it conforms to the accounting order.

Q. Here is the accounting order with the index to the accounts; will you show in what respects the Public Service Commission's report form does not comply or does not have those accounts (handing witness paper)?

A. What accounts?

Q. The accounts that are named in the Public Service uniform system of accounts.

A. I would be glad to take the time, if you wish me to do so, to analyze this accounting order with the report form, and indicate wherein the report does not conform to the accounting order.

Q. But you could not state now?

A. I would not know offhand. I would not attempt to. Do you wish me to do that?

Q. Well, you have made the statement that it does not conform. I would like to find out in what respect. 32060

Mr. Ransom: I object to this.

A. I would be glad to furnish you with this; I would not undertake to do it at the moment.

Q. Can you identify this document which was filed with the Commission from your office (handing paper)?

A. I find nothing there that I have any recollection of having seen before. It purports to be a statement made by the company, I think, of a list or schedule of all the accounts which it kept on its books on July 1st, 1909, with the exception of its accounts with individual consumers. I have no means of identifying it except that it has attached to it a letter dated 32061 September 13, 1909, signed by Mr. Gawtry, vice president. I presume—

Q. Do you question that that is the return, or do you believe it is the return?

A. I presume it accompanied the schedule when it was sent to the Commission. I would not question it as having been a correct statement at that time.

Q. You believe it is a return made at that time, and a correct statement?

A. I have no doubt that it was a correct statement at that time.

Mr. Clark: I will offer that in evidence, your Honor, the schedule of all the accounts kept by the company.

Mr. Ransom: I object to this as immaterial, no bearing on any issue of this case, the books are in evidence which show these accounts, and special counsel for the Commission can not now impeach the action of the Commission.

The Master: You are offering this paper here, the tabulated schedule of all the accounts which it kept on its books on July 1st, 1909, with the
32063 exception of its accounts with individual consumers?

Mr. Clark: Yes.

The Master: I will allow it.

Mr. Ransom: Exception.

Marked Defendants' Exhibit AA191.

Q. I call your attention to page 6 of this exhibit, Mr. Carter, and ask you to read what appears opposite the prescribed title of "Salaries and Expenses of General Officers," as the account kept by—

The Master: Is that the paper in evidence?

Mr. Clark: Yes.

The Master: I won't let the witness read it.
32064 If you have any other question, ask it, but I don't want him to read what is in that exhibit.

Q. On page 6, Mr. Carter, opposite the title as prescribed by the Public Service Commission, "Salaries and Expenses of General Officers," appears on this schedule the title supposed to be carried in your books of "Salaries and Expenses of General Officers." Can you find any such account in 1909?

A. We find two sub-accounts that furnish that information.

Q. There isn't any account under that title?

A. There is an account "General Officers Salaries."

and an account "General Officers Expense," and they are kept in two subdivisions, the combined account is the general officers' salaries and expenses.

Q. In 1917 there was something else in there which you could not account for this morning?

A. Yes, $166 out of the $130,000.

Q. It is just as difficult to check up, isn't it, if you are $166 out as if you are $166,000 out?

A. There is nothing at all to it, there is no difficulty about checking it, and your people can check it in two minutes.

Q. Don't understand me to question the accuracy of 32066
your accounts.

A. Your question implied it.

Q. But the fact is that if the Public Service Commission attempted to check this figure, they would have just as much difficulty, without the information which they would have to get from some one up there, to check this 166 as to check $166,000?

A. They could not check any item.

Mr. Ransom: I object to this line of inquiry as not bearing on this case. Dr. Weber cannot come here and stand at the elbow of special counsel and say he did not do his duty all these years.

Mr. Clark: It is not a question of Dr. Weber 32067
doing his duty. They said they kept this account in 1909, and it appears they did not.

The Witness: During thirteen years there has not been an occasion when the Commission could not check every item reported by the company in the annual report to the Commission.

Q. On page 6 we also find the Public Service Commission account "General Office Supplies and Expenses." You also keep an account of "General Office Supplies and Expenses," do you not, Mr. Carter?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. Clark: Exception to both those rulings.

Q. Mr. Carter, in this exhibit I find under "General Law Expenses," that is the Public Service Commission title, you keep three expenses, three accounts, "Legal Expense," "Franchise Tax Litigation" and "Legal and Arrears Department." Is that still the case?

Mr. Ransom: Objected to as incompetent, the books speak for themselves, the uniform system of account speaks for itself.

The Master: Objection sustained.

32069 Mr. Clark: Exception.

Q. Mr. Carter, in 1918, Mr. Teele has included in his exhibit 205 the amount of $26,833.34, page 29, "Claims and Arrears Expense" which he states comes under account No. 836 of the uniform system of accounts, which is, "General Law Expenses." Can you state whether you included that account in the general law expenses as reported to the Public Service Commission in 1918? I show you page 57 of the 1918 report.

Mr. Ransom: Objected to as incompetent. He did not make this report and did not verify it.

The Master: He is secretary. I will over-

32070 rule the objection.

A. I should say that the item appearing as—well, as a matter of fact Mr. Teele's statement plainly indicates that on page 1037 of the operating ledger there is an item, "Legal Expense" conforming, on his theory, to the account No. 836 of $42,551.18.

Q. And that is the amount appearing in the report, isn't it?

A. That is the amount appearing in the report, on line 11 of page 7, of the report for 1918, appears the item, "General Law Expense," $42,551.18.

Q. Where, in your report for 1918, have you included this "Claims and Arrears Expense" of $26,000 which Mr. Teele said belongs in that same account?

A. I should say without having before me the original data from which the report for 1918 is compiled, that it is included in the item of miscellaneous general expenses, item 12, page 87, aggregating $278,687.81.

Q. Isn't it a legal expense, Mr. Carter?

A. It is not so deemed by us. It is a department that we have organized for the purpose of collecting final bills from consumers who have discontinued the 32072
use of gas and have left the premises where they were supplied and who have to be located and an effort made to collect the amount of their arrears; also a department that deals with the numerous small claims made against the company for damages on account of some injury to property.

Q. I understand what it is, but in your judgment it is not a legal expense?

Mr. Goetz: If your Honor please, we object to this question. The uniform system of accounts shows the account, G. 836, general law expenses, does not include the services of attorneys or regular employees, and this account is kept for the 32073
services of attorneys who are regular employees.

The Master: Objection sustained.

Q. Well, Mr. Carter, Mr. Teele thought it was a legal expense, did he not?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Q. And this exhibit shows you considered it under general law expense in 1909, does it not?

Mr. Ransom: Objected to. Incompetent.

The Master: Objection sustained.

The Witness: I wish by changing its name we could get rid of the expense.

By the Master:

Q. Mr. Carter, I want to ask you, I think you testified to the Rowland report, as to whether the stock was issued at the time of organization?

A. Yes, sir.

Q. That was based on the figures in the Rowland report?

A. Yes, in the Rowland report to the Consolidation Committee.

32075 Q. Yes.

A. Yes, sir.

Q. Did you have anything to do with the properties at that time, so that you can tell whether the figures given by Rowland were reliable or fair to indicate the value of the property at that time?

A. I was familiar with the properties at that time and have been for the intervening period, and I know that the values placed—

Mr. Chambers (interrupting): He asked you if you were able; now I am going to take objections when you begin to state.

The Master: You don't think Mr. Carter is

32076 qualified?

Mr. Chambers: You are going to ask him to pass on the reliability of Rowland's report?

The Master: I was going to find out if he had any occasion to examine into it.

Mr. Chambers: To that I have no objection, but I do object to his passing upon the reliability of the Rowland report.

Q. What did you have to do with those properties at the time organization in so far as having any knowledge as to the values of various properties? You have been connected with one of the companies, as I recall?

A. I had for seven years prior to the consolidation, and of course immediately after consolidation my duties at the general office of the company required that I should be familiar with the operations of these various plants, and with the up-keep of them or maintenance of them, repairs of them. Of course, the impression that I would have of the value of the plants at that time would be based upon what knowledge I had of what was being done by other companies at that time then constructing plants.

Q. Yes.

A. There were several companies, your Honor, that 32078
at that time—I say several, the Standard Company I think at that time was constructing, and certainly the Equitable was at that time constructing a plant, or had constructed a plant quite recently; the Mutual plant was, of course, a more modern plant, even old as the Mutual Company was.

Q. Let me interrupt you. Which company was it that you were connected with?

A. The New York Gas Light Company.

Q. Well, in your connection with that company did you have to deal with the amounts paid for construction and for land and for apparatus? Did you have knowledge of what was required for those pur- 32079
poses?

A. No, no great amount of information respecting costs at that time. They were operating, your Honor, an old plant that they had had for some time. During the period that I was with them they changed the 21st Street plant, which was originally a coal gas plant, to a water gas plant, taking out certain coal gas benches and substituting gas generators.

Q. Let me ask you, immediately following the consolidation, how familiar did you become with the cost of lands and buildings and apparatus used in the gas business?

A. Through contact with the companies' own accounts, the amounts that were being expended currently for up-keep of those plants gave a fair impression of the cost of reproducing them.

Q. I am going to ask you one more question, but don't answer it until Mr. Chambers objects, because I may sustain the objection to my own question.

Based upon the knowledge you had surrounding the organization of this company and immediately following it, would you say that the figures placed upon the combined properties for which the stock was
32081 issued as you have testified, was the fair aggregate value of the property at that time?

Mr. Chambers: To that I object on the ground that it is irrelevant, incompetent and immaterial Mr. Carter is not a gas engineer, is not shown to have been familiar with values or cost then.

The Master: I think I will sustain the objection to my own question. I am doubtful as to just what Mr. Carter's qualification was.

By Mr. Ransom:

Q. You didn't have any occasion during 1917 and 1918 personally to check all the figures in the 1917 and 1918 operating ledgers?

32082 A. No, I did not.

Q. You testified this morning only to what you found in those books when they were produced here before you?

A. That is all.

By Mr. Clark:

Q. Mr. Carter, is it not a fact that in the consolidation the figure of total capitalization of the Consolidated Gas Company was arrived at by adding up the market value of the securities of the various companies to be consolidated?

Mr. Ransom: I object to that as incompetent.

The Master: I will allow it.

Q. Didn't you so testify in the 1906 case?

A. I believe that the aggregate amount of stock authorized was approximately the market value of the securities of the Consolidated Company.

The Master: Of the constituent companies?

The Witness: The constituent companies. That was the basis—my recollection does not go back—even if I testified in 1906 that that was the case, thirteen years later I do not feel that I would 32084
want to trust to my memory except to confirm anything that I said in 1906 on that subject.

Q. What is your impression?

A. What is my impression? My impression is just what I have stated.

Mr. Clark: That is all.

(Witness excused.)

32085

32086

CHARLES FRANK, recalled:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Now, Mr. Frank, take Defendants' Exhibit AA127 for identification. You have already stated that that table was prepared under your direction?

A. Yes, sir.

Q. And some others worked upon it besides yourself?

A. Yes.

Q. Where did you get your information from that
32087 finally found its way into that table?

Mr. Ransom: I object to that as immaterial.

The Master: I will allow it.

A. From the company's general ledger.

Q. Was some time spent in the preparation of the table?

A. There was some time spent on it, yes.

Q. And the data was obtained directly from these ledgers?

A. Principally Ledgers Nos. 4 and 5.

Q. Now, take the very first item, Mr. Frank, which you have entitled, "Credit Balance at the Beginning of the Year"—where did you obtain that figure from?

32088 Mr. Ransom: I object to that as immaterial.

The Master: What is that figure?

Q. Yes, what is that figure?

A. It is the credit balance at the beginning of each year beginning with 1906 and ending in 1918.

The Master: Balance of what?

The Witness: Standing in the general profit and loss account on the company's general ledger.

Mr. Ransom: I object to that.

The Master: That is what he says the item is. I am going to sustain the objection to the amount of the item.

Q. Can you show on the record where you got it from?

Mr. Ransom: I object to that as immaterial.

The Master: Objection sustained.

Mr. Chambers: I don't see why—

The Master: Because I am going to keep out the profit and loss statement.

Mr. Chambers: Entirely?

The Master. Entirely.

Mr. Chambers: I ask you to state on the record why you so rule?

The Master: I will not make any further statement than I have already made when this was offered for identification. 32090

Mr. Chambers: I take an exception.

Q. Did you find that figure for credit balance at the beginning of the year 1906 set up in that amount on the ledger?

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained.

Q. Now take the gas sales for 1906, where did you get that from?

Mr. Ransom: I object to that as immaterial.

The Master: I will allow that.

A. That is the amount shown in the account "Gas Sales," on the company's general ledger. 32091

Q. And is that amount taken directly from the ledger?

A. It is.

Q. And does it appear in that sum, or have you made an addition?

A. No, it appears in that sum.

Q. Now, what is the sum as found for "Gas Sales" in 1906?

Mr. Ransom: I object to that.

The Master: I will allow it.

Mr. Ransom: Exception.

A. In 1906, $12,290,236.83.

Q. Now, miscellaneous income, where did you get that from for 1906?

Mr. Ransom: I object to that as immaterial. It does not relate solely to the gas business. It covers a variety of matters. The idea of where he got this particular item from is immaterial and has no bearing on any issue in this case.

The Master: I will hear where he got it.

A. From the general ledger account called, "Miscellaneous Income."

32093 Q. You have a little star there where you say, "Details in Supporting Schedules." What do you mean by that?

A. The other exhibit.

Q. That is Exhibit AA128, for identification?

A. Yes.

Q. I ask you to state what was the miscellaneous income for 1906?

Mr. Ransom: I object to that as incompetent and immaterial and having no bearing on any issue of this case. This is not made up from the operating ledger, it is made up from the general ledger of all the company transactions, it does not

32094 relate wholly to the gas business, but relates to a variety of items. The injection of these extraneous elements can only have the effect of delaying the trial.

The Master: Objection sustained.

Mr. Chambers: Exception. I offer to show what was the miscellaneous income for 1906?

Mr. Ransom: Objected to on the grounds already stated.

The Master: Objection sustained.

Mr. Chambers: Will the Master please state what he bases the ruling on?

The Master: No further statement than already made.

Mr. Chambers: Exception.

Q. Now, take Defendants' Exhibit AA128, for identification—that is a paper to which you referred a moment ago, Mr. Frank?

A. Yes.

Q. Now, for 1906, did you ascertain the gas stove rents?

A. Yes.

Q. How much did you find the gas stove rents to be, what sum? 32096

A. $154,529.50.

Q. In 1906 did you find any gas appliance rents?

Mr. Ransom: I object to this method of proof.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. There is nothing shown on gas appliance rents.

Q. Gas stove sales income, did you ascertain what that amount was?

A. That is shown as $11,786.48.

Q. Now the gas stove rents and gas stove sales income, you took from where?

A. From the company's general ledger.

Q. Now, gas merchandise revenue for 1906, did you 32097
find any income from that shown on the books?

A. No.

Q. Sales of scrap?

A. Nothing for 1906.

Q. Residuals and by-products revenue?

A. Nothing for 1906.

Q. Commission on others gas?

A. Nothing for 1906.

Q. Now, you found an item, lamp maintenance income, did you not, for that year?

A. Yes.

32098 Charles Frank, Direct.

Q. What amount did you find that to be?

A. $247,381.14.

Q. The next item you have for 1906 you have entitled "Discount." What is that, do you know?

Mr. Ransom: I object to that as incompetent. This witness is not qualified to state.

Q. Before you state the amount, what do you mean by "Discount"?

Mr. Ransom: I object. It is not a question of what he means.

The Master: What the books show.

32099 A. The discount on materials purchased.

The Master: Discounts on materials purchased for gas making?

The Witness: I should say for all the company's business.

The Master: Items other than gas making and gas distribution?

The Witness: There may have been such items in it.

Q. You don't know, do you, whether there were or not?

A. No, I am not sure.

Q. It is apparently a discount for merchandise
32100 purchased, isn't it?

Mr. Ransom: I object to that as leading. It has no relation solely to materials used in the gas business.

The Master: Objection overruled.

A. The company does not divide it in its books.

Q. That is what I am trying to get at.

Mr. Ransom: Not in this general ledger, of course.

Q. What did you find the books show up on that item?

A. For the item of discount?

Q. What did you find out about it? If you want to refresh your recollection from the books, do so.

A. I do not quite understand the question.

Q. You have an item for discount which you took from the books.

Mr. Ransom: No, from the general ledger.

Q. From the general ledger?

A. Yes.

Q. Does the general ledger show the purchases of what goods that is the discount for?

A. In order to get the detail you would have to go to the operating ledger, but I believe the operating 32102
ledger shows the same amount for discount in 1906.

The Master: Does it show the details?

The Witness: It would involve an analysis of every item there.

The Master: Did you do that?

The Witness: I did not.

Q. Now, I ask you to give me the amount of the discount you found.

Mr. Ransom: Objected to on the grounds previously indicated.

The Master: Objection sustained.

Mr. Chambers: Will you state why?

The Master: Nothing further. 32103

Mr. Chambers: Exception.

Q. Why didn't you analyze the "Discount"?

Mr. Ransom: I object to that as immaterial.

The Master: I will let him state.

A. There might have been some material bought on which there was a discount which was charged to construction account, and this item of construction might later have been charged to one of the other companies. It would have been impossible to trace it.

Q. Now, I ask you to give the amount of the discount

Mr. Ransom: Objected to on the grounds previously stated.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, wharfage, state what you found out about that for 1906?

A. It is income received by the company for the use of its wharves or piers.

Q. Do you know where?

32105 A. Which particular one?

Q. Yes.

A. No, I don't remember now.

Q. Did you examine it to see?

A. No.

Q. Is the amount that you have given under this title the amount which was set up on the company's books?

A. It is.

Q. I ask you to state the amount of wharfage?

A. $535.34.

Q. Now, you found another item, did you, of real estate rents received, still speaking of 1906?

32106 A. Yes, sir.

Q. Is that the amount that you set up on this table?

A. It is.

Q. That you found?

A. That is the amount in the books, yes.

Q. What did you do with reference to that item? Did you make any examination to find out upon what real estate the rents were?

A. It contains all the real estate rents received.

Q. Do you know what pieces of real estate—did you at the time?

A. No.

Q. You did not go back and examine—

A. Every piece of real estate?

Q. Yes.

A. No, I did not.

Q. Why didn't you do that?

Mr. Ransom: I object to that as incompetent, irrelevant and immaterial.

The Master: I will let him state.

A. Because from the information which I have and the knowledge which I have of the company's properties it would have been impossible for me to determine which were operating, that is, property 32108
used in the gas business, and property not used in the gas business.

Q. And you know of no information in the company's books that would give you that?

A. No, there is no information in the company's books.

Q. I ask you to give the amount of real estate rents received?

Mr. Ransom: Objected to as immaterial and incompetent, in relation to property not claimed to be used in the gas business.

The Master: Objection sustained.

Mr. Chambers: Will your Honor say why yo 32109
will not take that?

The Master: Nothing further.

Mr. Chambers: Exception. I offer to show what was the total real estate rents received by the company from all sources for 1906.

Mr. Ransom: Objected to.

The Master: Sustained.

Mr. Chambers: Exception.

Q. Miscellaneous rent revenue. You found such a title, did you, for 1906?

A. Nothing for 1906.

Q. I know, but you found such a title in the book did you?

A. Beginning in 1909; yes, sir.

Mr. Ransom: No such title in the uniform system of accounts.

Q. Nothing for 1906 under that, anyway?

A. No.

Mr. Ransom: No such title.

Mr. Chambers: Judge Ransom, just do not object each time now.

Mr. Ransom: I will preserve the complain-

32111 ant's rights.

Q. Miscellaneous rent revenue, U. S. Government; anything under that for 1906?

A. No.

Q. Insurance fund income. You found such a title did you, under "Income"?

A. Yes.

Q. And it was under the company's heading of "Miscellaneous Income," was it?

A. Under the general heading of "Miscellaneous Income," yes.

Q. And all these items you have spoken of were under the company's heading "Miscellaneous Income"?

32112 A. Yes.

Q. What was that for; did you ascertain what was shown on the ledger?

A. Interest on the company's insurance fund.

Q. Do you know what insurance fund that was, for what purpose, or could you tell by refreshing your recollection from the books?

A. I cannot recollect just now what that item is.

Q. Could you by turning to the ledger for 1906 or the journal?

A. The general ledger would not give me any information.

Q. It would not?

A. No.

Q. Where would you get your additional information about that?

A. I would probably have to go to the operating ledger to find it.

Q. Could you if you had the operating ledger here?

A. I think so, yes.

Q. And do you remember whether you did trace that?

A. I think I did at that time, but I cannot distinguish between those two insurance income accounts 32114
just now. There is one insurance fund income and the other one, income under insurance agreement.

Mr. Chambers: Will you bring down your operating ledgers from 1906 to 1918?

Mr. Ransom: They are here.

The Master: I am going to finish with this witness now. I am not going to have any more books brought down. This case is going to end. I am going to get through with it.

Mr. Chambers: If you won't let the tables in I will have to prove the figures in the best way I can.

The Master: I am sick and tired of this. I 32115
have spent all morning on it.

Mr. Chambers: Sick and tired of the case?

The Master: Yes, sick and tired of the way it is being tried now.

Mr. Chambers: I take an exception, if your Honor feels that way. If you let the tables in that would be the end of it.

The Master: I will not.

Mr. Chambers: But you have seen fit to split it up. I do not see any trouble about it.

32116 Charles Frank, Direct.

The Master: You know what the trouble is.

Mr. Chambers: No, I think it is a perfectly competent question.

The Master: Next question.

Mr. Chambers: Exception to the ruling.

Q. Mr. Frank, I have asked you what was the amount you found in 1906 under miscellaneous income, the sub-heading "Insurance Fund Income"?

Mr. Ransom: Objected to as incompetent, no relation to this case.

The Master: Objection sustained.

32117 Mr. Chambers: Exception.

Q. Income under insurance agreement. Did you find some item for that?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you ascertain the amount that you found in the ledgers for income under insurance agreement, under the heading miscellaneous income for 1906?

Mr. Ransom: Objected to.

The Master: Objection sustained

Mr. Chambers: Exception. Will the Court state why we cannot show that?

32118 The Master: No.

Mr. Chambers: Exception.

Q. Insurance participation income. Did you find anything for that?

A. Nothing on that.

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Fire insurance participation income. Did you find anything for that item.

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Miscellaneous revenue for 1906. Did you find anything for that item?

Mr. Ransom: Objected to.

The Master: Unless it is one of the items that has to do with the making or distribution of gas, objection sustained.

Mr. Chambers: How are we going to strip it?

The Master: I do not know.

Mr. Chambers: I do not know either. 32120

The Master: You should have stripped it before you brought it in here, just as Mr. Teele did. It is perfectly simple for Mr. Frank to analyze these accounts and strip them just as Mr. Teele did.

Mr. Chambers: How do you know we have not?

The Court: If you have, get it in.

Mr. Chambers: I have to lay the foundation of original sources first, have I not?

The Master: No.

Mr. Chambers: Before I can strip it?

The Master: No. 32121

Mr. Chambers: All right, I am just asking the questions to show what we did.

Q. Miscellaneous interest revenue?

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Joint gas rent revenue?

The Master: What does that mean, joint gas rent revenue?

Q. What is meant, do you know, by joint gas rent revenue?

A. The rental of the property jointly used.

By the Master:

Q. Is that the same as the rental of jointly used facilities?

A. Practically the same.

Q. Is it the same?

A. It is the same.

The Master: I will take it.

The Witness: There is nothing in 1906.

Q. Interest on bank balances for 1906. Anything for that, Mr. Frank?

A. There is nothing here. There is nothing.

32123 Q. Anything on interest?

A. For 1906, no.

Q. Interest on City of New York Corporate stock?

Mr. Ransom: Objected to as immaterial.

The Master: Sustained.

Mr. Chambers: Exception.

Q. Interest on United States Government Liberty Bonds, for 1906?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Now, I am going to ask you to give me the total of miscellaneous income from these different sources, as you found it to be for 1906?

32124 Mr. Ransom: Objected to on the previous grounds.

The Master: Same ruling.

Mr. Chambers: Exception. You won't permit us to show that?

The Master: No.

Mr. Chambers: Now, I offer to show what was miscellaneous income of the Consolidated Gas Company as set up in its ledgers for 1906.

Mr. Ransom: Objected to on the grounds previously stated.

32125

The Master: Objection sustained. I am not going to let you show anything now except what it costs this company to make and distribute gas, either by its own books or some other source, or just what it should have cost them. Let us get down to it.

Mr. Chambers: I want to go through all these questions here.

The Master: I will not let you.

Mr. Chambers: To show these amounts.

The Master: I will not let you.

Mr. Chambers: You are not going to let us finish our case, then?

32126

The Master: All right, then we will stop it now. You will either show me what it costs them, what material goes in, what they paid for it, why they did not pay the right sum, what it should cost them, or this case will end now. I won't waste any more time with it.

Mr. Chambers: You mean you are not going to let me ask what the miscellaneous income is for any of those years?

The Master: I am not. You have a ruling on it for 1906, which covers every year.

Mr. Chambers: Exception.

The Master: This has got to stop.

32127

Mr. Chambers: I do not quite understand what you mean—that you are not going to let us show what the company's income was and then strip it and show what it cost them.

The Master: That is precisely what I say you are going to show me, if you can ever show it—where they are wrong in their statement that they used a certain quantity of material, or a certain amount of labor, and paid certain sums for it. That is the issue that I am going to hear now.

32128

Mr. Chambers: I am going to except to your ruling. I will have to go on; we are entitled to make our record.

The Master: You have made your record.

Mr. Chambers: No, some of these items you have allowed in. I will have to have them for the entire period and I have to ask these questions.

The Master: He started to tell you what the gas income was for the year, and you would not let him. What is the gas sales for all the years, according to the general ledger?

32129 Mr. Chambers: First I want to know what the credit balance was at the beginning of the year 1907?

Mr. Ransom: Objected to as immaterial.

The Master: It is the same ruling as to 1906 and as to all the other years, and there is no necessity for repeating these questions.

Mr. Chambers: I take an exception and I offer to show what was the credit balance at the beginning of 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917 and 1918.

The Master: I will not allow it, and I would likewise like to know in that connection who

32130 gave out a statement published in the Evening World on Saturday, showing these figures that I have not permitted in?

Mr. Chambers: Certainly I do not know. I did not know there was such a newspaper article.

The Master: Well, I happened to see it Saturday night.

Mr. Clark: It is a matter of public record.

The Master: I noticed that the article very carefully said it was taken from the Public

32131

Service records, and of course the newspaper had a right to publish it. But somebody connected with this case gave it out.

Mr. Chambers: It certainly was not me.

Mr. Hayward: I knew nothing of it; it was not here.

The Master: I have my own notion as to who did it.

Mr. Chambers: I have not given anything out to the newspapers from the beginning of the case to this minute.

The Master: I think I know who did it.

32132 Mr. Chambers: I hope that is not the reason you are not allowing me to prove these items?

The Master: No, but my not allowing you to prove the items is the basis of my criticism for giving out the statement.

Mr. Hayward: It did not say in the article, did it—I did not see it—that it had been admitted here in evidence?

The Master: No.

Mr. Hayward: It was not like the item that the Consolidated Gas Company gave out of Judge Ransom's opening statement.

The Master: No, that is correct.

32133 Mr. Hayward: I did not see the World and I do not know anything about it.

The Master: But the whole article as it read was one that was liable to misconstruction. The man who wrote the article was justified in writing it, because he wrote facts.

Mr. Ransom: It was evidently taken from this exhibit that was excluded.

The Master: My criticism was to putting it out at this time.

Mr. Chambers: As I said heretofore, I hope you are not visiting your wrath upon me because

The New York World published some of these figures.

The Master: No, my ruling was made before that article was published, and I say that the information should not have been given out in the light of my ruling.

Mr. Chambers: I took it when you ruled before—in the first place, I do not think yet you fully understand it.

The Master: I fully understand, Mr. Chambers, the theory on which you are trying to get
32135 it in. I likewise fully understand, I think, the purpose of trying to get it in.

Mr. Chambers: Some of these items are clearly competent.

The Master: Yes, and it is perfectly simple for you to have Mr. Frank prepare a table showing the items I am allowing in, and not this schedule which shows the balances to the credit of profit and loss year after year and the total earnings of this company, in which I have no interest.

Mr. Chambers: The only way I thought he could prepare a table as to the miscellaneous in-
32136 come was in this way.

The Master: Well, he better consult with Mr. Teele or some other accountant; perhaps he can get some information on that.

Q Gas sales, you have stated it for 1906, Mr. Frank?

A. Yes.

The Master: What is the purpose of giving it for every year? Are these figures in conflict with the figures given by Mr. Teele?

Mr. Chambers: I have not checked them up to see.

The Master: Well, unless you say they are in conflict I am not going to waste time taking them.

Mr. Chambers: Let us see.

The Master: Suppose you look at it during recess sometime and ask this witness something you know there is a necessity for proving.

Q. I ask the witness, did you, for 1907 as to gas sales, check to see whether those checked with Mr. Teele?

A. They did check with the amount of gas sales shown by Mr. Teele, but I do not really remember 32138
whether there were any adjustments to profit and loss which he included. I do not think there were.

The Master: In other words, the figures for all these years, of the total amount of gas sales, agree with Mr. Teele?

The Witness: They do.

The Master: What is the use of fussing with it? What I want to know is something that the other side testified to that was wrong: I want to see the errors not whether they are right?

Q. You checked each of those, did you, Mr. Frank, with the gas sales? 32139

The Master: Objection sustained. The witness has already told you he did.

Mr. Chambers: I offer to show year by year the sales from 1907 to 1918, inclusive.

Mr. Ransom: Objected to in view of the statement.

The Master: Objection sustained on the ground it is quite clear that these figures are in accordance with Mr. Teele and no object to be gained by it, and not useful.

Q. Miscellaneous income for 1907, Mr. Frank?

The Master: The same ruling would apply to all the years as I made with reference to 1906, and exception allowed.

Q. Gas stove rent for 1907; what was the amount?

The Master: Are these figures in conflict with Mr. Teele?

The Witness: I do not think they are.

The Master: Objection sustained as not useful to this inquiry.

Q. Did you say they were or were not?

The Master: He says he thinks they are.

32141 Mr. Chambers: In conflict?

The Master: Not in conflict.

Q. What do you mean, gas stove rents? Does he set that up in his?

The Master: I do not care whether he sets it up in his or not. I want to know whether the figures set up by Mr. Teele were wrong and, if so, in what respect they are wrong.

Mr. Chambers: Do not let us get excited here.

The Master: I am not getting excited: I am getting impatient.

Mr. Chambers: I ask him to state the amount of gas stove rents for 1907.

32142 The Master: Objection sustained, and so as to all the other years.

Mr. Chambers: Exception.

Q. Gas stove sales income?

The Master: Not allowed unless the witness will state that Mr. Teele's figures were wrong in that respect.

The Witness: I don't think they were wrong.

Mr. Chambers: What is that?

The Master: He says, "I don't think they were wrong." Therefore the question is not allowed.

Mr. Chambers: In other words, we cannot state anything unless it is in conflict with Mr. Teele?

The Master: What is the purpose of it? What is the sense of it?

Mr. Chambers: Because I want to show the miscellaneous income here on the different items.

The Master: Objection sustained.

Q. Mr. Teele did not have any table like this miscellaneous income table, did he?

Mr. Ransom: Objected to, immaterial.

The Master: Objection sustained. 32144

Mr. Chambers: Exception.

Q. Gas merchandise revenue income for 1907?

The Master: Objection sustained unless the witness will state that the figures given by Mr. Teele which included these are wrong.

The Witness: There was no merchandise revenue in 1907.

Q. Sales of scrap?

The Master: I am not going to allow it unless you can bring out from the witness that he has analyzed Mr. Teele's figures as bearing upon any of these figures, and that they are wrong, and show me how they are wrong. I won't allow 32145 the question.

Q. You did not analyze Mr. Teele's figures?

A. I did some of them, yes.

Q. Did you for this miscellaneous income?

A. You mean all the items of miscellaneous income?

The Master: I don't care whether he takes this, that, or the other thing.

The Witness: Particularly the rent miscellaneous.

The Master: What accounts did you analyze of Mr. Teele's that you found errors in?

The Witness: On miscellaneous rent revenue.

The Master: Yes.

The Witness: It was not a matter of error, it was a matter of judgment as to which was gas property and which was not gas property.

The Master: So that you have taken all of the revenue?

The Witness: In this statement all of the revenue is shown.

32147 Q. For the purpose of this statement?

A. For the purposes of this table.

Q. This is a preliminary table?

A. Yes.

The Master: I don't care what you call it.

Q. Did you find any residual by-product revenue for 1907?

The Master: Objection sustained. The witness has stated that the only thing that he could complain of was that Mr. Teele took only part of the rent revenue as applicable to the gas business, and not all of it.

Q. Commissions on other's gas?

32148 The Master: Same ruling unless the witness can state where there was an error in Mr. Teele's statement.

Mr. Chambers: Exception.

Q. Now, lamp maintenance income?

The Master: Same ruling on the same ground.

Mr. Chambers: Exception.

The Master: This goes as to all the years.

Q. Now, discounts?

The Master: Same ruling.

Mr. Chambers: No, I am sticking to 1907, you are getting ahead of me.

The Master: The same ruling as to 1907 and to all the other years. I am not going to let you repeat it as to all the other years.

Mr. Chambers: I don't want you to go so fast; I can't keep up with it.

The Master: I am not going to let you repeat it for every year.

Mr. Chambers: It is self-evident you are not going to let me do much just now, but I am going to try.

The Master: All right.

Q. Lamp maintenance income, I have forgotten 32150
whether the Master ruled that out for 1907 or not?

The Master. Same ruling unless the witness will say Mr. Teele's exhibit was wrong in that respect.

Q. Did you check up his lamp maintenance income? Did he set that out separately?

A. I believe that is set up separately in his statement for 1907.

Q. Do you recall whether this is the same or not?

A. I am quite sure it is the same.

Q. Will you give me the amount for that?

The Master: Objection sustained. If Mr. Teele has given it to us and he says it is right, 32151
why do I want it again?

Mr. Chambers: Because I want you to have it all together here in this table in ship shape.

The Master: We will take the table.

Q. Now, discount?

The Master: Same ruling.

Q. Did Mr. Teele have that set up, that same account?

Mr. Ransom: Objected to as incompetent, no bearing on any issue in this case.

The Master: Objection sustained.

Mr. Chambers: Does your Honor rule that we have to show that Mr. Teele is in error as to discount?

The Master: The Master rules that I am not going to let you put in your proof in the form in which you are attempting to do it. The Master rules that it is required of the defendants that they point out the errors, miscalculations or wrong bases of calculation of Mr. Teele, and show the correct figures. I am going to insist on getting it that way.

32153 Mr. Chambers: Of course, all I can do is except. This is the way I think it should be done.

The Master: I don't think so, and I won't take it. The purpose of this case is to clarify the issue and not confuse it.

Mr. Chambers: Exactly.

The Master: And I am going to clarify it. Show me where the figures produced by the complainant are wrong, not where they are right.

Q. Did Mr. Teele set up any item of discount as a separate item?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

32154 Mr. Chambers: Exception.

Q. Now, wharfage, for 1907?

Mr. Ransom: Objected to on the same grounds.

The Master: I am going to sustain that objection, too, upon the grounds already stated, that this is not the way to present the facts, and I won't permit it to be done this way.

Mr. Chambers: Exception.

Q. Now, real estate rents received?

The Master: Same ruling.

Mr. Chambers: To go back a little bit, I offer to show the item for discount, wharfage and real estate rents received for 1907.

The Master: Objection sustained.

Mr. Chambers: As set up in this miscellaneous income account.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, miscellaneous rent revenue?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Miscellaneous operating revenue, U. S. Govern- 32156
ment?

The Master: Same ruling.

Q. Insurance fund income?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Income under insurance agreement.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Now, the item of insurance participation income, fire insurance participation income, miscellaneous revenue, miscellaneous interest revenue, joint gas rent revenue, interest on bank balances and interest on City of New York corporate stock and interest 32157
on United States Government Liberty Bonds, I ask if you found any of those items in 1907?

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. Chambers: Exception.

The Master: Mr. Chambers, we might as well understand each other now as at any other time. The complainants have proved this case, by oral testimony and by their books, that in the manufacture of a certain quantity of gas in the year

32158

1918, and for other periods, they used certain quantities of material, and a certain amount of labor and expended certain sums which they claim were necessarily a part of the cost of making and distributing the gas; that as against that they received certain sums from residuals and otherwise, showing a net loss in operation. I shall expect the defendants to meet that issue, and I shall expect them to show me that they did not make that much gas, or that they made more gas, or that they did not use that much material or that much labor, or did not spend moneys
32159 that they say they did, and I am not going to permit the issue to be confused by the preparation of tables on some theory other than the theory that this case has got to be decided on.

Mr. Chambers: Well, in one breath you say that we can show that, and in the next breath you stop us from showing that very thing, you are not permitting us to show it.

The Master: I am not at all interested in their profit and loss statement. I have allowed you to put in tabulations which you say are taken from the books, showing operating costs. Now, I did not analyze it or compare them with the figures
32160 put in by the complainant, but I have assumed that they are different in some respect. Now, I gather from this witness's testimony that they agree with the figures put in except that he has omitted taxes and some other items that I have to put in again. Now, what is the use?

Mr. Chambers: I can't remember that Mr. Teele ever had any item for discount in his table. There was nothing like that that I have ever seen.

The Master: If there is any defense to this case I want to hear it, I don't want any more time wasted.

Q. Now, I ask you to give me the total of items for miscellaneous income for 1907?

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, I ask you to give me for 1906—

The Master: How much do you say it costs them to make gas in 1908, Mr. Chambers?

Mr. Chambers: I haven't got the figures here.

The Master: When are you going to have them?

Mr. Chambers: I expect to.

The Master: When am I going to have them? 32162

Mr. Chambers: Just as soon as we reach that point.

The Master: When are you going to reach that point?

Mr. Chambers: You allowed them for months to show from 1906 to 1918 what it cost them to operate and distribute gas and then offset against that their income—

The Master: When am I going to know how much you say it costs them to make gas in 1908, for materials and labor?

Mr. Ransom: 1908 or 1918?

The Master: 1918? 32163

Mr. Chambers: What day in 1920?

The Master: Yes.

Mr. Chambers: When we reach that point in the defense.

The Master: When are you going to reach it, are you ready now?

Mr. Chambers: I don't know, sir.

The Master: Do you know now what your theory is as to what your claim is it cost them to make gas?

32164

Mr. Chambers: If you shut this all out, we may never reach that point.

The Master: Don't you know now how much the defendants claim it cost the complainant to make gas?

Mr. Chambers: No, I don't know myself.

The Master: Is there ever going to be a time when you will know?

Mr. Chambers: I assume there is.

The Master: When?

Mr. Chambers: When we reach that point in the case, the same as they did, at the tail end of
32165 their case. I think we are entitled to show—

The Master (interrupting): I am entitled to know what the defendants' claim is now.

Mr. Chambers: Well, I have stated to you many, many times.

The Master: No, you have not. Ever since this case started I have been trying to find out how much you say it costs to make and distribute gas, and I cannot find out.

Mr. Chambers: Well, that is not a defense, and I am willing to state now on the record what the defense is.

The Master: I don't want you to state it.

32166 Mr. Chambers: And I will state it in good plain English, too, that is, I think I will. What it costs to make and distribute gas in 1918, an abnormal year, is certainly, I don't think, allowing the defendants to defend the action when they claim in their complaint that they have not enjoyed a fair return from 1906 down to date. You cannot escape that allegation in the complaint.

The Master: What do you say it cost them to make and distribute it in 1906?

Mr. Chambers: I haven't those figures here.

32167

The Master: Or 1907.

Mr. Chambers: I haven't those.

The Master: Or 1908, or any other year.

Mr. Chambers: I think if you allowed us to present our case we would be able to show you what we say it costs them to make and distribute gas for each of the years as shown by their own records.

The Master: Go ahead. I am going to let you show that.

Mr. Chambers: Well, that is just what this tends to show.

The Master: But you are not showing it that 32168
way.

Mr. Chambers: Well, this is preliminary, this is the beginning.

The Master: Well, we will cut out the preliminaries. Time is too short.

Mr. Chambers: You know you can't frighten me one bit by suggesting that I don't know what really are the issues in this case, because I would be delighted to take up fifteen minutes and tell you.

The Master: I am quite sure you do.

Mr. Chambers: Right on the record, too.

The Master: I am quite sure you do know, 32169
and knowing this case as you do—

Mr. Chambers (interrupting): I know we are in a court of equity you know.

The Master: Yes. Knowing this case as you do, I can see at once where you are trying to rather confuse it than to clarify it.

Mr. Chambers: No, you are mistaken. As a matter of bookkeeping, the entire foundation has to be laid finally to see what it costs to make and distribute gas, according to their own statement.

The Master: Next question.

Q. Now, did you ascertain—

The Master (interrupting): Mr. Vilas, will you see the clerk in charge of these courts and see whether I can use this room tonight, and what arrangements can be made for elevator service and heat and light?

Mr. Chambers: If you contemplate going on at night, I am going to suggest on the record in the first place that I am not able properly to defend the action when you go on from 9:30 in the morning until 6:00 in the evening every day,

32171 for day after day.

Mr. Ransom: You have simply wasted this morning.

Mr. Chambers: You are simply denying us the right to be heard.

The Master: Next question.

Mr. Chambers: Particularly in view of the fact that complainant in presenting its case only presented it substantially four hours a day and had the afternoon to prepare for the next day.

Mr. Ransom: We wanted all day sessions and night sessions and repeatedly asked for them.

Mr. Chambers: That was one of your bluffs.

32172 The Master: Next question.

Q. Now, take this Exhibit 127 for identification. Did you ascertain the total operating expenses for the year 1906?

Mr. Ransom: Objected to, incompetent.

The Master: Is that figure about which you are asking Mr. Frank in conflict with Mr. Teele's figures and if so in what respect?

Mr. Chambers: I don't know.

The Master: Objection sustained.

Q. I will ask him. Do you know?

A. The same as Mr. Teele's?

Q. Yes.

A. He does not show anywhere a figure in one figure of operating expenses.

Q. He does not?

A. He does not.

The Master: Is his total the same when you take them all together, your items?

The Witness: It is the same as—if you take the items which are gathered together on the company's books and put into this item of Operating Expenses, it will be the same.

The Master: Objection sustained. 32174

Mr. Chambers: Exception.

Q. Now, under operating expenses, what item did you put in for 1906, in your schedule?

Mr. Ransom: Objected to, incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

The Master: This is not a case to be tried on fancy tables, it is a case to come in and show me where Mr. Teele's figures are wrong.

Mr. Chambers: Will you state the grounds for ruling that way?

The Master: Yes. I want to see where Mr. Teele's figures are wrong, not where they are 32175 right.

Mr. Chambers: Will you state why we can't show for 1906 the total operating expenses as we claim them to be?

The Master: Nothing further than I have already stated.

Mr. Chambers: Exception. Now, I offer to show what the operating expenses were for 1906, as shown by the company's general ledger.

The Master: I will let you show in what respect Mr. Teele's statement as to what the ex-

penses were was in error, or in what respect he was wrong.

Mr. Chambers: He doesn't show any such figures as that, as I understand it.

The Master: Well, then, I will let you show any figures he set out which are wrong, in which the result is the same according to Mr. Frank.

Mr. Chambers: Exception.

Q. Now, did you set up in your table here for 1906 the Bond Income of the United Electric Light and Power Company, the Brush Electric Illuminating
32177 Company, the New York & Westchester Company and the Astoria Light, Heat & Power Company?

Mr. Ransom: Objected to as incompetent, no bearing on the issues.

The Master: Objection sustained.

Q. I ask you what was the Bond Income from those four companies?

Mr. Ransom: Objected to, incompetent and irrelevant.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, interest on loans and investment, Mr. Frank, what did you ascertain that to be for 1906?

32178 Mr. Ransom: I make the same objection.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Now, dividends of the Standard Gas Light Company dividends received by the Consolidated Company from the Standard Gas Light Company, New York Mutual, New York Edison, New York & Queens, Astoria Light, Heat & Power Company, National Coal & Coke and Municipal Lighting Company —did you ascertain what those were for 1906?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. I ask you to state what those incomes were received from dividends in 1906 as shown by the company's books?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Now, contigent expenses for 1906, did you ascertain what that was?

The Master: Same ruling.

Mr. Chambers: Exception. That is, you won't let me show—

The Master: My ruling applies to every figure on this table. I am not interested in that. I 32180
am only interested in figures presented here that were wrong. I do not want to have them restated in some other form; I want to get the facts.

Q. Now, the item for taxes for 1906—

The Master: I am going to make the same ruling about that. Do you claim that Mr. Teele's item of taxes is wrong, Mr. Chambers?

Mr. Chambers: I have not checked it.

The Master: Objection sustained.

Mr. Chambers: I was not doing the accountant work.

The Master: But you ought to know what your 32181
case is, you ought to know whether Mr. Teele's figures are wrong, and in what respect, and what you want to prove.

Mr. Chambers: Yes, his taxes were all out of joint. Don't you remember he had taxes in that should not be in at all, and he had interest on taxes that should not be in?

The Master: Yes.

Mr. Chambers: He had taxes that were not applicable at all to the gas-making business.

The Master: Have you excluded certain items?

Mr. Chambers: First, we are taking all the taxes. We are going to.

The Master: I won't take it that way. I will let you call Mr. Frank and ask him whether he has excluded certain items included by Mr. Teele and what they amount to.

Q. You haven't done that, have you, Mr. Frank?

A. Not in this statement.

The Master: Have you in some other state-

32183 ment?

The Witness: I have, yes.

The Master: Let us have the other statement.

Mr. Chambers: We are not quite ready, we are going to show the beginning of this. When we offer the other table there will be complaint that we did not offer this, to show what all the taxes were.

The Master: Go ahead.

Q. What is your note down here at the bottom?

The Master: Objection sustained. I don't care about his notes.

Q. I ask you to state all the taxes that you found

32184 paid out by the company for 1906?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Interest on funded floating debt?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Renewals and replacements—you didn't find any for 1906?

The Master: Same ruling.

Mr. Chambers: Exception.

The Master: Did Mr. Teele find any for 1906, do you know, Mr. Frank?

The Witness: There was no such thing on the books in 1906.

The Master: So he didn't have it and you didn't have it?

The Witness: Exactly.

The Master: What a horrible waste of time.

Q. Interest on unpaid taxes, 1906?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Interest on consumers' deposits?

The Master: Same ruling.

Mr. Chambers: Exception. 32186

Q. Amortization of debt discount and expense?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Deductions and allowances?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Nonoperating revenue deductions?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Miscellaneous operating revenue deductions?

The Master: Same ruling.

Mr. Chambers: Exception. I offer to prove by Mr. Frank what was the total for credits applicable to the income account for the year 1906. 32187

The Master: Same ruling.

Mr. Chambers: And the total for debits applicable to intercompany income for 1906.

The Master: Same ruling. I am not interested in what their profit was for all operations of various kinds in 1906; I am trying to find out what they made in the gas business.

Mr. Chambers: Exception.

Q. Are you able to say what was the net credit for 1906?

The Master: Same ruling.

Q. Being the difference between the two sums?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Are you able to say what was the net credit plus balance at the beginning of the year?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Now, the dividends, did you ascertain the dividends of the company, paid out by the Consolidated Gas Company?

32189 The Master: Is that in conflict with the testimony already given as to what those dividends were?

Mr. Chambers: He didn't say any.

The Master: Who?

Mr. Chambers: Mr. Teele.

The Master: Some other witness did.

Mr. Chambers: Mr. Carter, I think testified—

The Master: In other words do you claim that the statements made in the complainant's case as to the amount of money disbursed for dividends year after year was wrong?

Mr. Chambers: I don't think there is any testimony as to the amount in money of the dividends paid out in 1906.

32190

The Master: Objection sustained.

Mr. Chambers: There is the rate.

The Master: Do you say the rate was wrong?

Mr. Chambers: Well, I am not challenging it in that way. I am trying to show to the Court what amount they paid out in dividends in 1906, which the U. S. Supreme Court says is competent.

The Master: Objection sustained. The Master reiterates what he has said a number of times

on this record—he welcomes any proof offered by this defendant which challenges the proof offered by the complainant and shows that it was wrong. He will not take proof on any item unless counsel will indicate that he intends to prove the inaccuracy of the proof offered by the complainant.

Mr. Chambers: Of course I cannot make you take it. All I can do is to struggle along and try to show the Court what I offer to prove. Isn't that all I can do?

The Master: Don't take too much time. 32192

Mr. Chambers: Incidentally it is to be regretted that it takes a lot of time to do it.

Q. Did you ascertain the balance credit for 1906?

The Master: Same ruling. This is the balance of the profit and loss account?

Mr. Chambers: No, balance credit applicable to the income account, difference between balance credit and balance debit—

The Master: In the profit and loss account?

Mr. Chambers: Well, yes, substantially that.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you ascertain the credit balance at the close 32193 of the year?

The Master: Same ruling. I am talking now, and I suppose Mr. Frank is, of the credit balance in the profit and loss account.

The Witness: Yes, sir.

The Master: Same ruling. I am ruling it out.

Q. Now, 1907, "Miscellaneous Income"—

The Master: Now, Mr. Chambers, I assume that you are asking the same questions in 1907 that you did in 1906, are you not?

Mr. Chambers: Yes, sir.

32194

The Master: Same ruling.

Mr. Chambers: As to each one of them?

The Master: As to each one of them as to each year, as to each item. I cannot give you a broader exception than that.

Mr. Chambers: I offer to show the following for each of the years. The credit balances at the beginning of the year for each year from 1907 to 1918, inclusive.

The Master: Credit balance to profit and loss account?

Mr. Chambers: Call it what you want to.

32195 The Master: What are you talking about? Are you not talking about this general profit and loss account? That is what you want to show, the credit balances at the beginning of the year in that account?

Mr. Chambers: Yes.

The Master: Go ahead.

Mr. Chambers: Not in the account, of that account.

The Master: Of that account.

Mr. Chambers: I offer to show the credit balances at the beginning of the year, starting with 1907 to 1918, inclusive, and the credits applicable to the income account for the year, including

32196 gas sales; miscellaneous income; bond income; interest on loans and investment; Astoria advances; East River Gas Company advances; dividends; operating expenses. And, the debits relating to operating expenses; contingent expenses; renewals and replacements; taxes; interest on unpaid taxes; interest on consumers' deposits; interest on funded and floating debt; amortization of debt discount and expense; deductions and allowances; nonoperating revenue deductions; miscellaneous operating revenue deductions; net credit for the year, plus balance at the beginning

32197

of the year; dividends, balances credit; adjustment credits and debits, credit balance at close of year.

The Master: For each of the years?

Mr. Chambers: For each of the years.

Mr. Ransom: I make the same objection as previously stated.

The Master: Objection sustained.

Mr. Chambers: Exception. Now, will you state why you will not allow that?

The Master: Because I am not interested in that profit and loss account which includes things other than the gas making business, and because 32198
you will not indicate as to items that might otherwise be allowable, that they are in conflict with the figures produced by the complainant; and wherever the witness has been asked he has stated that they were in accord with the figures presented by the complainant.

Mr. Chambers: I ask that the table which was marked for identification, that the Court take those figures and spread them upon the record.

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. Chambers: That is, you won't take any of the figures and put them in as my offer of proof? 32199

The Master: No.

Mr. Chambers: Exception. Now, I offer to show for each of the years 1907 to 1918, inclusive—first of all, I take it you will not allow me to show any miscellaneous income in any of the years?

The Master: Not in the form in which you have offered it, and unless you can show where the complainant proved an incorrect figure.

Mr. Chambers: Then I had better go on a little bit until you make your ruling.

Q. Under the item of miscellaneous income, Mr. Frank, take the gas stove rents for 1907—will you state that?

Mr. Ransom: I object to that.

The Master: One moment. Is Mr. Teele's figure wrong?

The Witness: I don't think so.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. And gas stove sales income?

The Master: The same ruling as to all these

32201 questions except where the witness will state under oath that Mr. Teele's figures were wrong.

Q. Now, lamp maintenance income?

The Master: Same ruling as to all these.

Mr. Chambers: Exception. That is, you will not let him state unless he says—

The Master: That Teele's figures were wrong.

Mr. Chambers: You will not let me ask him whether Mr. Teele set up certain items?

The Master: No, I won't let you ask him.

Q. Did Mr. Teele have any table like this?

The Master: Of course he didn't. Objection sustained.

32202 Q. Did Mr. Teele set up anywhere in his table an item of discount?

The Master: Objection sustained.

Mr. Chambers: Exception. Now, I offer to prove by this table, Exhibit AA-128 for identification, or by the testimony of the witness, the details of items of miscellaneous income shown by the company's ledgers for 1907 to 1918, inclusive, including gas stove rents; gas appliance rents; gas stove sales income; gas merchandise revenue; sales of scrap; residual and by-product revenue; commission on other's gas;

lamp maintenance income; discount; wharfage; real estate rents received; miscellaneous rent revenue; miscellaneous operating revenue; insurance fund income; income under insurance agreement; insurance participation income; fire insurance participation income; miscellaneous revenue; miscellaneous interest revenue; joint gas revenue; interest on bank balances; interest on City of New York corporate stock; interest on United States Government Liberty Bonds.

The Master: Same ruling.

Mr. Chambers: The Court will not allow any of 32204
these figures?

The Master: Except you will point out, and the witness will state that Mr. Teele's figures which include these were in any respect wrong.

Mr. Chambers: Will you state the grounds of your ruling?

The Master: Nothing further than I have already stated.

Mr. Chambers: Exception. Will you allow me to put upon the record for the purpose of my offer all of these figures for all these years shown in the table?

The Master: I will not. Your proposed ex- 32205
hibits are marked for identification, if you can get them in that way, otherwise you cannot.

Mr. Chambers: I ask to do that only as part of my offer. Do you decline to allow me?

The Master: Yes.

Mr. Chambers: Exception. I think that is all.

By Mr. Clark:

Q. In your statement, Table 23, Production Expenses, which Judge Ransom asked you about as to why the adjustments were left out, do you remember

what the circumstances were for not adjusting those tables?

Mr. Ransom: I object to that as immaterial and incompetent. They are left out, it is incomplete without them.

The Master: I will allow him to state.

A. You refer to the items of profit and loss adjustment?

Q. Yes.

A. I have not received from Mr. Davidson all the vouchers or underlying papers in connection with that
32207 account.

Q. The reason was that you could not explain the profit and loss?

A. I have to have vouchers and other papers underlying those entries before I can tell just what they are.

Q. And to what years they apply?

A. I should say 1909, 1910, 1911, 1912, 1913, 1914—five or six years.

By the Master:

Q. Did you read Mr. Teele's testimony?

A. As to that subject?

Q. Yes.

32208 A. No, sir.

Q. Did you analyze his table which shows those adjustments?

A. I went over it, yes.

Q. Didn't you take the trouble of reading his testimony in conjunction with those adjustments to see where he got them?

A. I did not read his testimony.

Q. Why didn't you go to the same sources?

A. I did go to the same sources.

Q. Why didn't you get them?

A. I don't know. Mr. Davidson did not furnish

them to me. He said he could not find this voucher, or that voucher, and this one was missing, and so on.

Q. Have you a memorandum of the vouchers that were missing?

A. I gave Mr. Davidson last Tuesday a memorandum of about ten that have not been furnished.

Q. Ten vouchers?

A. Ten vouchers or papers.

By Mr. Ransom:

Q. Didn't you go over Mr. Teele's adjustments?

A. I went over them for a new year's, yes. 32210

Q. All the years you wanted to?

A. All that I had time to do at that particular time.

The Master: Did you find any errors there?

The Witness: I did not have the supporting data.

Q. Did you find any errors in the years you did check?

The Witness: Not in the items that we did cover, but we did not have the original data.

The Master: All right, step down; next witness.

Mr. Chambers: As to Exhibit AA-78, I would 32211 like to have a photostatic copy marked in place of the original.

The Master: Just leave all of those with the stenographer and he will mark the photostatic copies in place of the originals. Go on, let us get the next witness.

Mr. Chambers: That is all we have right now. It is ten minutes to one. At two o'clock I will have some more coming.

The Master: Then we will sit tonight.

Mr. Chambers: I will object to that.

32212

The Master: You may object as much as you like, I am going to finish this case.

Mr. Chambers: I won't have any material tonight, I don't believe.

The Master: All right.

Mr. Chambers: I have gone on here, there are some things we cannot get ready until they are ready. You may close the case against our protest.

The Master: I am not going to close the case until you have rested but I want the record to show what is being done in this thing.

32213

Mr. Chambers: All right, I will state right now on the record that I am not ready with any more witnesses here at ten minutes to one.

The Master: And you won't have any more until two o'clock?

Mr. Chambers: And I would like to have from four to six to prepare for tomorrow.

The Master: You won't do it.

Mr. Chambers: And I would like to have this evening.

The Master: You won't do it. This case is going to be finished.

32214

Mr. Chambers: I have worked a good many evenings here trying to get ready for this case, and we didn't have time. There is so much detail to go over.

The Master: Unless you gentlemen can show me pretty quick what proof you intend to offer so as to justify my sitting any longer in this case, I am going to stop it and shut it off.

Mr. Chambers: You have that right any minute, to put us right out and close the case over our protest.

The Master: Unless you can show me what proof you intend to offer, and indicate what er-

32215

rors you intend to point out, and where it is going to be of some use in this case, I am going to stop this case. I am going to sit here until one o'clock waiting for proof.

The stenographer will note that I am going to sit here until one o'clock waiting for additional evidence on the part of the defendants.

Mr. O'Brien: I will ask that Mr. Livingston be produced here at two o'clock, your Honor. Mr. Ransom, there is a little memo for you (handing paper to Mr. Ransom).

Mr. Ransom: This request seems to be not for two o'clock, but either this afternoon or Tuesday, 32216
January 20th.

The Master: Can you get him here for two o'clock?

Mr. Ransom: I do not know.

The Master: Do the best you can. Do you want Mr. Livingston without those vouchers?

Mr. O'Brien: No.

Mr. Ransom: He has asked for three closely typewritten pages of infinitesmal and inconsequential vouchers.

Mr. O'Brien: Yes, and I will give you another list this afternoon for 1919, and you might as well get Mr. Livingston busy on the vouchers 32217
for 1919.

The Master: Get those vouchers here with Mr. Livingston as soon as possible.

Mr. O'Brien: Your Honor, I have made a request about the stock books, and I told Mr. Carter that I would be glad to give him a list so as to avoid the necessity of bringing down all the books—a list of just what I wanted.

The Master: What do you expect to prove by the stock books?

32218

Mr. O'Brien: I want to prove the holdings of various people.

The Master: On the theory of interest?

Mr. O'Brien: Yes, interest in the companies that are doing business with the Consolidated Company. That will not take much time.

The Master: Yes, I am going to let you make your record on that this afternoon, and I am going to rule it all out. I am not going to take any more.

Mr. O'Brien: Will you direct that they bring the stock books or a list of the stockholders, so that there will be a proper record made?

32219

The Master: No, you can have Mr. Carter on the stand and ask him any one name you like, and I am going to rule it out. I am going to get through with it.

Mr. O'Brien: Won't you let me put in the names of the various people?

The Master: I will not.

Mr. O'Brien: I mean in my questions.

The Master: I will not. One question will be enough to give you my ruling.

Mr. O'Brien: Well, you can make your statement at that time.

32220

The Master: Yes, one name. I am not going to take any more proof on that. I will assume for the purposes of this case that there is a unity of interest of the stockholders, directors and all the people they do business with, and then show me how much it ought to cost them. It is irrelevant.

Mr. O'Brien: We will make our record.

The Master: I am telling you now what I will do with it.

Mr. Ransom: In connection with this request for this large quantity of vouchers, I assume that

32221

Mr. O'Brien will bring it about that the other defendants give instructions to their accountants to release these vouchers, which they have had for some weeks. They are not under our control.

Mr. O'Brien: Now, Judge Ransom, cut out that kind of stuff, won't you?

The Master: You bring down such vouchers as you have.

Mr. O'Brien: Of course, we want them.

The Master: I am going to give Mr. O'Brien an opportunity to ask a series of questions of Mr. Livingston indicating the character of the 32222
service rendered represented by these vouchers. I will permit no duplications and I will permit only a limited number of questions as showing interest, and, if Mr. O'Brien can show it, the uselessness of his work.

Mr. O'Brien: Your Honor, there is no necessity of your pronouncing before you have heard a question out of me, before I have made a statement of what I intend to prove—if setting up the sign of what you are going to do. It is decidedly premature, if you will permit me to say it.

The Master: I am permitting you to say it.

Mr. O'Brien: It is in keeping with your con- 32223
duct in this case.

The Master: I am informing you in advance what I am going to do.

Mr. O'Brien: All right, I might have assumed it from your attitude on other matters that have come up before.

The Master: If there is any real defense to this case I want to hear it.

Mr. O'Brien: We have our own defense and will put in our own defense in our own way.

32224

The Master: I am busting that map pretty fast *here today. I want* to know how much it costs to make and distribute gas, from your point of view.

Mr. Ransom: Are there any other witnesses?

The Master: I do not know; I am going to wait here until one o'clock.

Mr. Chambers: I have said there are none. Have I got to say it over and over, that I have no witnesses until two o'clock.

The Master: That is just why I am sitting here. I am directing you to get witnesses and go

32225 ahead with this case.

Mr. Chambers: I cannot get any until two o'clock.

The Master: I am giving you until one o'clock to get them here. I am going to stay here until one o'clock to give you an opportunity of getting them.

Mr. Ransom: Mr. Carter is here if you want to make a record on the share-holding matter.

The Master: Yes, Mr. Carter, step up here. Mr. O'Brien, ask such questions with reference to stockholding as you think you ought to have on the record.

32226 Mr. O'Brien: I have not got my memorandum here, your Honor.

The Master: One name will do. I say I will not allow it.

ROBERT A. CARTER, recalled by defendants.

DIRECT-EXAMINATION BY MR. O'BRIEN:

Q. Mr. Carter, a request was made of you to produce the stock lists last week, was it not, by me, and referred by you to Mr. Ransom?

The Master: Objection sustained.

Mr. O'Brien: I want to show the unwillingness to produce them, your Honor.

The Master: I do not care anything about his willingness or unwillingness. I take from your question you want to ask him as to whether cer- 32228
tain people own certain stock in this company.

Mr. O'Brien: I want to bring out the fact that they have refused to allow us to see the stock books and that that refusal has been continuous up to date; that they are concealing the holdings of the stockholders of this company from the defendants. May I not ask a question to make that record?

The Master: No, I say it is utterly immaterial to this issue.

Mr. O'Brien: Well, that is because you have made the ruling that it does not make any difference what unity of interest there may be in the 32229
complainant company and the corporations they do business with in very important matters.

The Master: Except as you can show that the price that they pay for material that they buy is excessive.

Mr. O'Brien: Well, that is the basis of your ruling as to keeping out the stock list.

The Master: Yes.

Mr. O'Brien: But over and above that, your Honor, will you not permit me to show on the record—they have taken that positive position—that they will not show them?

The Master: No.

Mr. O'Brien: This was before your ruling.

The Master: I say it is utterly incompetent. It does not make any difference what their stock holding is.

Mr. Ransom: The stock books have been here once.

Mr. O'Brien: I take an exception to your Honor's ruling.

Q. Mr. Carter, how much stock in the complainant company is held by Lewis Cass Ledyard, Lewis Cass
32231 Ledyard, Jr., Layne Whitney and James A. Stillman?

Mr. Ransom: Objected to as immaterial and incompetent.

The Master: Objection sustained.

Mr. O'Brien: Exception. I may state in that connection, your Honor, my first proposal is, and these questions are part of my plan, to show the community of interests in the complainant company and the companies that are doing business with the complainant, either in fiscal matters, with respect to moneys on deposit in the National City Bank of New York and the National City Company, or with the Standard Oil Company
32232 of New Jersey or with coal companies, or with railroad companies that handle coal business, or with the Standard Oil Company of New Jersey, and I take an exception to your Honor's ruling denying me the privilege of bringing out from the witness the holdings of various stocks in the complainant company during the years 1905 down to the present date.

Q. I ask you, Mr. Carter, how many shares of stock are held in the complainant company by William Hamlin Childs?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Is any held by William Hamlin Childs or any member of his family in the Consolidated Gas Company?

The Master: Objection sustained. Likewise on the ground that many of these questions have already been asked and answered.

Mr. Ransom: Yes, they were gone over quite fully when the books were here.

Mr. O'Brien: Exception. 32234

Q. You were present at the examination of the secretary of the Standard Oil Company, Mr. White, were you not, Mr. Carter?

A. I was.

Q. And you heard me ask him as to the holdings of those in the Standard Oil Company of New Jersey who held substantial holdings—Mr. Harkness and members of his family, Mr. Flagler and members of his family, and the various members of the Rockefeller family, both the family of William Rockefeller and the family of John D. Rockefeller—you heard those questions, did you not?

A. Yes. 32235

The Master: Yes, I suppose the witness heard them.

Mr. O'Brien: The witness answers yes with a smile.

The Master: Ask one more question and we will get through with it. We will adjourn now until two o'clock.

Mr. Chambers: Will the stenographer note, it is after one o'clock now.

Recess.

32236 Edward A. Lyon, Direct.

Afternoon session.

The Master: Now, Mr. Chambers, have you anything else? Have you got the papers here for Mr. Livingston?

Mr. Chambers: I would like to have it noted on the record that I did not have time to get my lunch, because the Court is crowding us so. I did not have any lunch. Of course, I am willing to go without sleep and lunch, but a time will come when you cannot press us on so hard as that, and I think the time has arrived now
32237 when it is unfair. We had to use all the time this noon to see where we stood. All right, Mr. Lyon.

EDWARD A. LYON, recalled.

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Lyon, when you were on the stand before I asked you to look up in the records of your company a contract between the Kings County Lighting Company and the Gulf Refining Company, dated October 5, 1906?

32238 A. Yes, sir.

Q. You had some investigation made?

A. Yes.

Q. And are you able to say now whether or not the original of that contract is in the company's possession?

A. No, the original of those contracts were destroyed by fire.

Mr. Chambers: That is all.

The Master: Now, can you go on with Mr. Livingston?

Mr. Chambers: No. I now offer in evidence the copy of contract which has heretofore been identified between the Gulf Refining Company and the Kings County Lighting Company, dated October 5, 1906.

The Master: Who identified it?

Mr. Chambers: I understand, as I recall, it was identified.

Mr. Ransom: Nobody.

Mr. Chambers: Who identified it?

The Master: Yes.

Mr. Chambers: I cannot remember whether 32240
the witness from the Kings County Lighting Company did, or Mr. Lyon.

The Master: You better look it up because I won't allow it in on my present recollection.

Mr. Chambers: Well, I will call Mr. Ransom then as a witness.

WILLIAM L. RANSOM, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS: 32241

Q. Mr. Ransom, you are attorney for the complainant in this case?

A. I am.

Q. And you were formerly counsel to the Public Service Commission?

A. I was.

Q. When did your services begin as counsel to the Public Service Commission?

A. On the morning of the 24th of April, 1917.

Q. And when did your services end?

A. On the 31st day of December, 1918.

Q. And were you there continuously between those dates?

A. With the exception of a certain period in 1917, I believe I was.

Q. And you were acting as general counsel for the Commission during that time?

A. I was acting as counsel for the Commission during that time.

Q. During the time you were there as counsel to the Public Service Commission, I will ask you to state if you are familiar with the way—by the way, who was C. S. Allen?

32243

A. C. S. Allen, as I recall, was a man who was in the employ of one of the concerns who took stenographic minutes of hearings before the Commission.

Q. Are you familiar with the stamp of the Public Service Commission?

lic Service Commission?

A. I believe I am familiar with most of the various stamps of the Public Service Commission.

Q. I show you a copy of the contract dated October 5, 1906, between the Gulf Refining Company and the Kings County Lighting Company, and ask you if that has the stamp of the Public Service Commission on it?

32244

A. This report relates to a—

The Master: Is that a stamp?

The Witness: This is a stamp that relates to a period when I was in no way connected with the Commission, but was on the bench of the City Court.

The Master: Well, was that stamp still used when you were there?

The Witness: I believe that or substantially that form was used by the reporter, whoever he might be, who noted on exhibits received before the Commission the case number and the exhibit number.

Q. Now, that paper was in the files of the department while you were there, apparently, or with the department's records, was it not?

A. This would indicate to me that in connection with a case which was tried before the Commission in the summer of 1916 there was offered in evidence and received in evidence the paper bearing this stamp. This does not in any way indicate to me that this paper had ever been filed with the Commission under any filing order of the Commission.

Q. It bears a case number?

A. It bears a case number, yes. 32246

Q. And what does that mean?

A. That means that it is an exhibit. The Commission has a stamp with which you may or may not be familiar. It has been on some documents which have been in court here this morning, which indicates the filing of a paper with the Commission under a filing order. That is a stamp of the secretary's office. And the person in the secretary's office when any document is received for filing under any Commission filing order, that stamp is placed on the document. This is not the stamp of filing, this is the stamp which corresponds, for example, to the notation which Mr. Briggs or other stenographers in this case make when an exhibit is marked either in evidence or for identification. 32247

Q. But that case, that filing number, is a file number of the Public Service Commission? A. This is not a file number, this case number 651 which appears here. That is not a file number. Matters filed before the Commission have file numbers. This is a case number and not a file number.

Q. Did you have occasion to refer to that case number for any reason while you were counsel to the Public Service Commission?

A. Case No. 651. I do not believe so.

Q. You know what it is about, don't you?

A. This case?

Q. Yes, this case number 651 on this exhibit?

A. I know there was an inquiry in the summer of 1916, presided over principally by Commissioner Hayward, in which he and his colleagues made an investigation into prices of gas oil.

Mr. Hayward: Oil?

The Witness: Oil, gas oil.

Q. And this is one of the contracts used in that case?

32249 A. That I don't know.

Q. Well, the case number indicates it?

A. This evidently—

The Master: I will assume that that was received by the Commission.

The Witness (continuing): —was offered in evidence. It evidently was offered by somebody and received in evidence as Exhibit No. 9 in that case.

The Master: I do not think that justifies me in receiving it.

Q. You don't know where the original is, do you?

A. No, absolutely not.

32250 Q. You haven't the original among your papers?

A. I naturally would not. I have nothing to do with the Kings County Lighting Company.

Q. Well, has the Consolidated Gas Company the original of this contract?

A. No.

Q. Have you seen the original?

A. I have never seen the original or a copy until this moment.

Q. You remember Mr. Hine, don't you?

A. I remember that there was a young man of that name connected with the Commission during my time there.

Q. Did you ever call Mr. Hine as a witness in any proceeding before the Public Service Commission, or in any litigation wherein you called him and qualified him as a gas engineer?

A. I have been trying to recall that since that came up the other day. I am quite sure that I never called him as a witness in any litigation.

Q. Do you mean by that—

A. (Interrupting.) Any suit in court.

Q. Do you mean by that strictly speaking an action?

A. Any suit in court? 32252

Q. Yes.

A. The fact is that I think with practically a single exception I had nothing to do with the trial of rate cases in court for the Commission.

Q. I am asking you whether you ever called him as a gas engineer before any hearing before the Public Service Commission?

A. I would not say that I had or that I had not, because the expression is inaccurate to say that I called him. Now, if I put him on the stand in court, which I did not ever see fit to do, then I as counsel to the Commission would, of course, be sponsoring him as the witness. If you were familiar with the 32253
procedure before the Commission, which you evidently are not, you would understand that an employee of the Commission in the capacity of gas engineer or accountant stands in exactly the same relation to the Commission that its counsel does. The counsel is the head of one department, Dr. Weber is the head of another department, and a witness like Mr. Hine or Mr. Frank, if he were put on the stand, would be put on simply as a commission witness. It is not any responsibility on the part of counsel. But to answer your question more—

Q. (Interrupting.) I will ask you the simple question, if you called him as a gas engineer in any hearing before the Public Service Commission?

A. I would not undertake to say that.

Q. You mean—it is lack of memory, is it?

A. I recall one afternoon being in the hearing room when Mr. O'Brien was representing the Corporation Counsel and made a vicious personal attack upon the qualifications or lack of qualifications—

Mr. Chambers: I object to that. I move to strike that out.

32255 The Witness (continuing): —of Mr Hine, he called him a beardless youth, and demonstrated at length—

Mr. Chambers: I object to his getting away from the question.

Mr. O'Brien: May I ask that the vicious attack be extracted from the record?

The Master: Yes, strike it out.

Mr. Hayward: I move the whole answer be stricken out as not responsive to the question.

The Master: Motion granted. Do you ever recall calling him as a gas engineer for the Commission?

32256 The Witness: Well, I say in the first place that counsel does not call witnesses before the Commission; the Commission calls witnesses.

The Master: Well, do you ever recall examining him as a gas engineer, as a witness before the Commission?

The Witness: I think that is even possible, that on one occasion I did ask questions of Mr. Hine as a witness before the Commission. Upon what basis he was then called by the Commission I do not now recall. I cannot recall ever having interrogated Mr. Hine as a witness be-

fore the Commission except on one occasion. There might have been others, but I do not recall them.

Mr. O'Brien: May I be permitted to ask a question?

Mr. Chambers: Yes.

By Mr. O'Brien:

Q. Judge, you recall him as being called by you in the proceeding which was held in the late winter of 1917 and 1918, and investigation into the quality and pressure and standards of gas furnished by the various gas companies of the City of New York? 32258

A. I do not now recall whether he testified in that case or not. I remember in that case that I did interrogate certain witnesses. I remember one witness in particular whom I interrogated in that case. Whether I conducted any part of any examination of Mr. Hine in that case, I do not know.

Q. Do you recall, Judge, that there was a proceeding, I think it was Nos. 1610, 1807 and 1787, known as the Woodhaven & Newtown Gas Company matters, in which an order was made by the Commission in 1916, in a proceeding that had extended over several years and in which Mr. Miller was called as an expert in behalf of the Newtown & Woodhaven 32259
Gas Company, the same Mr. Miller who testified in this case? You will recall that under an order of March 4, 1918, that proceeding was reopened with a view of determining what charges should be made by the Commission—what charges should be allowed by the Commission for gas sold by these companies, and you recall there were held a number of hearings in which you called Mr. Hine as a gas engineer?

Mr. Vilas: I object to this line of inquiry.

Mr. O'Brien: I am refreshing the witness's memory.

A. I recall there had been conducted several years before I became counsel to the Commission an investigation by Commissioner Hayward, in which as a result of his recommendation, certain rates were fixed by the Commission for certain companies in what we might roughly call the outlying district of Queens.

Q. Won't you say whether you did not call him in that proceeding? Doesn't that refresh your memory?

A. The cases were reopened by the Commission of its own motion, and Assistant Counsel Chamberlain
32261 conducted most of the proceedings upon the rehearing.

Q. He was your assistant?

A. I have some recollection now in the Newtown cases of being present one afternoon when Mr. Hine was on the stand, and you, Mr. O'Brien, made an attack upon Mr. Hine's qualifications to testify, and being present at that afternoon when you challenged his qualifications. Most of the hearings in that case were conducted by Mr. Chamberlain.

Q. He was your assistant, acting under your direction?

A. He was an assistant counsel of the Commis-
32262 sion who acted under the directions of the Commission.

Q. He was your subordinate, you won't quibble over words, he was your subordinate?

A. He was assistant.

Q. He wrote a lot of briefs in which your name appeared?

A. Yes.

Q. Now, do you recall any other?

A. As I have said, I do not now recall any other.

Q. Wasn't he called in the cases involving the Brooklyn Borough Gas Company, their application made in September, 1918?

A. Not that I recall. I do not recall myself participating in any examination of Mr. Hine in that case. Most of the examining of the witnesses in the Brooklyn Borough case, after the opening hearing, was conducted by one of my assistants, and I do not now recall either Mr. Hine being on the stand in that case or using Mr. Hine on the stand in that case. It is entirely conceivable that he did testify in the Brooklyn Borough case, and it is quite within the bounds of possibility that I did take part in interrogating him, but I have no recollection of it. Most of the examination in the Brooklyn Borough 32264
case was conducted by one of my assistants.

By Mr. Chambers:

Q. You know Mr. Goetz, who is with you in this case?

A. Reasonably well.

Q. He was with you when you were counsel for the Public Service Commission, was he?

A. Part of the time he was connected with the Commission in a capacity in which he was not subordinate to me; part of the time he was one of my assistants.

Q. Did he leave the same time you did?

A. He did not. 32265

Q. Did he leave prior or after?

A. Somewhat after.

Q. You persuaded him to come over, did you?

Mr. Vilas: I object to that as immaterial and irrelevant.

The Witness: Quite immaterial

The Master: I will sustain the objection.

Q. Mr. Goetz wrote an article on depreciation, while he was with the Public Service Commission?

Mr. Vilas: I object to that as irrelevant and immaterial.

The Master: Objection sustained.

Mr. Chambers: That is all. I now ask to have marked for identification this copy of the contract about which I interrogated Mr. Ransom.

The Master: What purports to be a contract?

Mr. Chambers: What purports to be a contract, dated October 5, 1906.

Mr. Vilas: Objected to as not proper proof.

Marked Defendants' Exhibit AA192 for identification.

32267

ROBERT A. CARTER, recalled.

DIRECT-EXAMINATION BY MR. O'BRIEN:

Q. Mr. Carter, I was asking you whether you were present at the examination of Mr. White, secretary of the Standard Oil Company of New Jersey, and you heard my questions to him as to the various holdings in the Standard Oil Company of New Jersey of various members of the Rockefeller family and Mr. Harkness and Mr. Flagler. You were present?

32268 A. I was present.

Q. Now, I will ask you if you are able to say what the holdings are of various members of the Rockefeller families, that is of John D. Rockefeller and William Rockefeller and their sons and daughters and Mr. Harkness and Mr. Flagler?

Mr. Ransom: Objected to as incompetent.

The Master: Stockholders in what?

Mr. O'Brien: I am asking him what their holdings are of stock in the Consolidated Gas Company.

The Master: No, you did not say that.

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Have you held any stock in the Standard Oil Co. of New Jersey since 1905?

A. I have not.

Q. Have you held any stock since 1905 in the Standard Oil Co. of New York?

A. No, sir.

Q. Do you hold any stock in any oil companies?

A. No.

Q. Have you since 1905? 32270

Mr. Ransom: I object to that as immaterial and incompetent.

The Master: Objection sustained.

Mr. O'Brien: I assume your ruling would be the same on further questions as to further names of corporations or individuals and their holdings in the stock of the Consolidated Gas Co. from 1905 to date?

The Master: That is right.

Mr. O'Brien: I take an exception to your ruling, and assume that will be the uniform ruling throughout the case?

The Master: That is right. 32271

Mr. Ransom: I have the 1918 Livingston vouchers here, and Mr. Livingston is here.

Mr. O'Brien: I hand Judge Ransom now, and I ask that he have delivered at the earliest moment these vouchers as numbered and described on these three sheets, vouchers in favor of R. E. Livingston during 1919.

The Master: Are they the same general class as the 1918 vouchers?

Mr. O'Brien: I cannot say that positively.

The Master: Do you know of any particular vouchers that are different from those produced for 1918?

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Mr. O'Brien: From the description given me I suppose they relate to the same classes of expenditure, but—

The Master: Then I will not require them to be produced for 1919.

Mr. O'Brien: These cover a period, part of which was within the time during which this trial has been conducted, and I will ask that counsel—I will issue a subpoena *duces tecum* if necessary. If they don't produce them and are not willing to produce them, I will issue a subpoena *duces tecum* and stand on our rights.

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The Master: I am willing to let you bring out any items other than the year 1918 that are not shown up in 1918.

Mr. O'Brien: The vouchers will have to speak for themselves; I will not generalize on it.

The Master: I am not going to let you take each voucher.

Mr. O'Brien: I will serve a subpoena on them.

The Master: All right, do as you please.

Mr. Ransom: We have not had any request from you. If you have any request give it to us.

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Mr. O'Brien: You are trying to save time, aren't you?

Mr. Ransom: I suggest that if you have any request to make to give it to me.

Mr. O'Brien: I have a request, and I will make it in the form of a subpoena *duces tecum*.

R. E. LIVINGSTON, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Mr. O'Brien: I ask that the 1918 vouchers be produced.

Mr. Ransom: They are produced.

The Master: Hand them to Mr. O'Brien; don't be afraid of them.

Mr. Ransom: I didn't know but he might be.

Mr. O'Brien: I ask counsel now to produce the letter that I handed him before recess, in 32276
which I particularized the data that I wanted. They have produced the vouchers here without the papers appended to them.

The Master: What papers?

Mr. O'Brien: The detail papers on which these payments were made.

Mr. Ransom: I don't know what you mean.

Mr. O'Brien: I ask that the letter be produced that I handed to him before recess.

Mr. Ransom: The letter is now in the hands of some one at the office of the Consolidated Gas Company trying to get out the rest of what you requested. 32277

The Master: You haven't got all you want?

Mr. O'Brien: They have produced the vouchers which do not contain the original bills turned in by Mr. Livingston.

The Master: You haven't got all you want?

Mr. O'Brien: No.

The Master: You are not ready to go ahead with Mr. Livingston? All right, Mr. Livingston, step down. Just telephone up and get the rest of it.

Mr. Ransom: That is being done.

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The Master: If you haven't got all you want, we will get it, that is all. What else have you got, Mr. Chambers, have you anything else?

Mr. Chambers: I haven't anything ready for this afternoon. I will be ready tomorrow morning.

The Master: Mr. O'Brien, have you anything else?

Mr. O'Brien: Not at this moment, your Honor.

The Master: Well, the stenographer will note that it is 28 minutes past two. As I understand
32279 it counsel are not ready to proceed with this case?

Mr. Ransom: They gave us a request at ten minutes to one, and we got the vouchers here, and now they want something else.

The Master: Well, what am I going to do about it?

Mr. Chambers: When will you have them here?

The Master: I am not concerned about that so much. I want to know why we haven't any further witnesses to go ahead.

Mr. Hayward: I will say to the Master what
32280 I said to him and to Judge Ransom before the opening of the session this afternoon, that I at least, and the other counsel, stayed in at the noon recess here to try to get the testimony of the witnesses for the defendant in such shape that we could go ahead this afternoon, as desired by all parties, of course. We found that owing to what seems to me to be a coincidence on this particular day it is impossible for us to proceed this afternoon, unless with some of these minor matters which I didn't know anything about, which counsel have said they might

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have. Here is one of them that has gone by the boards now. As I told the Master at the opening, it seems to me we would waste time if we continued here this afternoon, but on the contrary, starting tomorrow morning, we feel, if the Master would indulge us this afternoon, that we could have our experts here with their tabulations and their data, etc., and put it in in an orderly and in a continuous way during the hours that the Master has announced for this week, up until Thursday morning; and after that I am sure, and believe, from what these experts for the different defendants tell me, that 32282
we can keep not only up to those hours, but even ahead of them. It will come faster than we can put it in. It is a mere coincidence that there has been a breakdown this particular afternoon. I have talked to the people myself and am convinced that they are absolutely acting in good faith in the matter, and it was not work, if your Honor please, that counsel themselves could have done, I am sure I could not have done it, no matter how much time I had put on it since the adjourning hour on Friday. It is an unfortunate circumstance, and one I suppose that will displease you, and one which displeases me, 32283
but I cannot do anything but make a fair statement of it and leave the matter in your hands.

If we try to put the stuff in piecemeal this afternoon why I came to the conclusion at the noon hour that we would be just that much worse off tomorrow. Accordingly, with the concurrence of Mr. Chambers, we instructed Mr. Maltbie to go to his office and get these witnesses ready without fail for tomorrow morning. He tells us there are four of them, three of them being new, and one being Mr. Hine. I have told the Master

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that Dr. Weber will have much that you will be interested in, and which ought to be in the record. It is a condition with which we are confronted and not a theory. This thing has been going on since July. It is not unprecedented in a case where there has been as much expert testimony as in this case, to have a breakdown. The case broke down at least once with Mr. Ransom. Here is a long case that has taken six months, and my personal opinion is that in all fairness and all justice you should give us this afternoon and evening to make an effort, which

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I think will be successful, to keep this case grinding after tomorrow morning; and, as I say, after Thursday we feel that we will have a good margin to take care of any possible exclusion that may come of our evidence.

The Master: You see, here is the situation, Colonel: So long as the defendants were keeping the time pretty fully occupied, I was able to avoid evening sessions, because I did not think they were necessary. It looked to me early last week as if the defendants were going to be able to finish this case in two or three weeks, and I think they would have if this proof had been in

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shape to go right along. I am not any more anxious than anybody else to hold these evening sessions. We have wasted practically a day today, and the minute I say I am going to hold evening sessions I hear a volley of protest. Now, this case has got to be finished. If this were an ordinary lawsuit I suppose I would be justified in saying that if you are not ready to go ahead with your proof I will have to close the case, but I cannot do that in this kind of a case, and counsel are in position where they can come in day after day, and use an hour or two or three

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and then say they haven't any more, and put the Court in a position where there is nothing to do except to stand around and mark time.

Mr. Chambers: In two weeks you have given us half a day.

Mr. Hayward: Do you think the case that the defendants have put in this far, up until this noon, has shown any disposition on our part to do anything except to get it in as fast as we can?

The Master: I said up to the latter part of last week I was in accord with the thought that they were doing all they could.

Mr. Hayward: Barring this one afternoon 32288
session, part of this afternoon, and we have already taken up as much time today as most courts do in a day.

The Master: Part of this morning was wasted.

Mr. Hayward: I conceded that during the recess. Is not the situation, with the exception of this afternoon, what it was last week, and have you the right to condemn us completely on our diligence because of one single breakdown, when I tell you that tomorrow at 9:30 we will be ready to go ahead.

The Master: You are not so sure you will have enough for all day tomorrow? 32289

Mr. Chambers: I don't agree with the statement that this morning was wasted, and I do feel—and I know the situation of the defendants as well as anybody—I feel that you have unduly required us to proceed here. We have not had time, counsel has not had time to consult with witnesses. By some of the rulings you have made you have upset what we thought was our line of defense, and we have had to prepare some of it over again. We were ready to go right straight through, reasonably ready, and

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most of the delay has been occasioned because of the rulings made by the Court which were not in accordance with counsel's judgment as to what they should be.

The Master: The answer is this: I cannot force you men to go on—

Mr. Chambers: I want to state on the record, I have stated it before, that to require counsel in a rate case such as this to go on from July right straight through, practically without any interruptions, and then, when you strike the defendants' case to add additional time, to require us to proceed from 9:30 until 6, is not in accordance with my idea of what is fair, and consequently the very thing has happened that I predicted would happen, that we might not be ready to go on continuously. I said in the beginning that we would try to go on. We have tried to do it, and now counsel has not had time to consult witnesses as to their testimony to be given.

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Mr. Ransom: If you stayed in town and worked you would have had time.

Mr. O'Brien: I want to say that since we have begun the defendants' case the time we have spent in court, and the work has been so taxing that the time left in the evening to get ready for the next day, and to get ready for the balance of the case to be put in, has been interfered with. It is almost impossible to get down to work after a grinding day's work such as we have put in here. I can say from my part of the case, and from what I know of the other defendants, that when the case is in the time consumed by the defendants will be but a small proportion of the time taken up in the complainant's case. There isn't any desire to delay. I

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think really it is time saved. If the men come into court properly prepared, and we haven't got to burn the midnight oil, I think we will make real haste in that way. I think we will get through this case much more quickly, and that time allowed for preparation would be time saved in the long run.

Mr. Ransom: I have all the Livingston vouchers here.

The Master: Have you all the supporting data that Mr. O'Brien wants?

Mr. Ransom: There isn't anything annexed to the vouchers, there was none. He has asked 32294
in his letter for some copies of publicity material. That isn't anything that we can produce that I know of. We have the vouchers.

Mr. O'Brien: Please allow me to read the letter to the Court.

Mr. Ransom: I would like to say a word on this question of time.

Mr. O'Brien: The letter, if I may be permitted to read it to you, is as follows:

"Consolidated Gas Company
vs.
Newton and others. 32295

Hon. W. L. Ransom,
120 Broadway, New York City.

Sir:

You are hereby requested to produce in court, at the trial of this action, either Monday afternoon, January 19th, or Tuesday morning, January 20, 1920, at 9:30 A. M., the vouchers together with attached

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papers which are enumerated upon the lists hereto attached.

You are also requested to have present at the same time to testify, Mr. R. E. Livingston.

You are further requested to produce at the same time copies of all newspaper matter or articles concerning the complainant company's affairs on the trial of this action prepared or sent out by the said Livingston during the years 1917, 1918 and 1919."

The next paragraph relates to the production of the stock records by Mr. Carter.

Mr. Ransom: The vouchers are here.

32207 Mr. O'Brien. I want the papers on which these vouchers were drawn, the underlying data, so that I may expedite the examination of Mr. Livingston and get the information that I want. I think we had better have it, because it will lead to a further delay unless it is produced. The vouchers which they have here are not the original papers.

Mr. Ransom: Of course, they are the original papers.

Mr. O'Brien: They are lists of payments made. Many of them have on them "Incidentals"—

32208 Mr. Ransom: Let the Court look at them. There isn't anything further to them.

Mr. O'Brien: I want the underlying data and bills that were put in by these men who were paid where they did work, so that the examination may be thorough and may be expedited at the same time.

Mr. Ransom: The whole thing is inconsequential, it is merely part of the defendant's tactics to waste time. They wasted time during the complainant's case by useless cross-examina-

tion, and now when they can't do that, they stall in every other way.

Mr. O'Brien: I will ask counsel now if there are not underlying papers on which these vouchers were based?

Mr. Ransom: What?

Mr. O'Brien: Do you assert that these papers which are produced are the only papers underlying the payments made? Do you say there were no underlying bills, receipts for the payment of money by Mr. Livingston?

Mr. Ransom: Those are the vouchers on which 32300
payment was made.

Mr. O'Brien: Is that all you have?

Mr. Ransom: In some instances there were bills rendered.

Mr. O'Brien: Mr. Livingston, please take the stand.

R. E. Livingston resumed the stand.

Direct-examination by Mr. O'Brien:

Q. Mr. Livingston, how long have you been in the 32301
employ of the complainant company?

A. About fifteen years, something over that.

Q. Then you were in the employ of the company at the time the original rate case was tried?

A. Yes, sir.

Q. And you are what is termed the publicity agent of the complainant company?

A. Well, that has never been given officially, the advertising manager and whatever information newspapers want. I am there to do the official talking.

Q. Well, you turn out matter to the newspapers from time to time?

A. From time to time.

Q. And you have during the progress of this case given the newspapers many articles prepared by you?

A. No, sir.

The Master: One minute. I don't want to waste time on that.

Mr. O'Brien: I won't go very far with it.

The Master: Mr. Livingston was called, as I understand it, to justify some payments made

32303 by him. Let us get to that.

Q. Mr. Livingston, with expenditures made by you from time to time what is your practice with regard to the method by which they are turned into the company for payment?

A. The bills come to me, then that statement is made up, the bills go down and are checked up in the auditing department so far as I know, because the signatures come back, that is the initials, and then the bills are not retained.

Q. You have paid out from time to time a great deal of money?

A. Well, that is a matter of opinion; I don't know.

32304 Q. Well, sums of money have been paid?

A. Yes, sir.

Q. Checks are drawn to you for lump amounts out of which you pay certain bills?

A. Yes, sir.

Q. And when you are turning in the amount of these disbursements made by you, how do you do it?

A. The bills go—

By the Master:

Q. What bills, Mr. Livingston?

A. The items that he refers to. At least for the advertising or whatever it may be.

Q. The bills from other people, you mean?

A. From other people to me, and those are all sent down with those statements.

By Mr. O'Brien:

Q. Well, are those bills that are sent down—you mean down to the auditing department?

A. Down to the auditing department.

Q. And these expenditures are made on the O K of Mr. Cortelyou, as I understand it?

A. Well, I am not so certain about that, sir.

Q. Don't you know that all of your payments are under executive order? 32306

A. Yes.

Q. They do not pass through the regular routine of other bills of the complainant company?

A. That I do not know. I do not know anything about the bookkeeping end of it at all.

Q. What is the rule? If there was a working rule under which you spent moneys, what was it?

A. My bills go down—such as you have there, I think, that bill goes down to the treasurer and a check comes back to me. That is all I know about it.

The Master: I think what Mr. O'Brien asked you was what authority you have for spending any of the moneys which are included, in your 32307 bill. How is that done; who gives you the authority?

The Witness: Oh, that authority came when I was originally with the company.

Q. You mean you do not see them after you send the bills down—the original bills? You get a check back for the amount?

A. Yes, sir.

Q. You do not see the bills after that?

A. Those come back with these.

Q. With what?

A. With the check.

Q. They come back with the check?

A. Yes, sir.

Q. At the same time this voucher is sent back?

A. No.

Q. This voucher, a type of which I hand you (handing witness)?

A. I have a copy of that.

Q. You make that out yourself, or does some one under you make that out?

32309 A. It is made out under me, yes.

Q. And attached to it when you send it down to the Auditing Department are the original bills?

A. Original bills and memoranda.

Q. And the check comes back?

A. Yes, sir.

Mr. O'Brien: Your Honor, I think that meets the situation we thought we had before us a minute ago, that there are papers, original bills, receipts, that show expenditures, and I ask that they be produced here.

The Master: I understand they come back to Mr. Livingston.

32310 Mr. O'Brien: What?

The Master: I understand Mr. Livingston gets them, from what he says.

Mr. O'Brien: He does not get the original bills back.

The Master: He said he did.

The Witness: Yes, sir.

Q. Have you the original bills in connection with each one of these vouchers?

A. No, sir.

Q. Where are they?

A. Destroyed.

Q. When were they destroyed?

A. Well, I presume as soon as that comes back. I suppose I have been destroying them every week for the last fifteen years.

Q. You have been destroying these bills?

A. Yes, sir.

Q. These evidences of disbursements made by you every week for the last fifteen years?

A. I should say I have.

Q. Then as I take it, when they come back to you and you get the check, you get this voucher back and you then each week destroy— 32312

A. I do not get that voucher back.

Q. What?

A. I do not get that voucher back; I get the check.

Q. You get the check back with the original bills?

A. Yes, sir.

Q. Then it is your custom each week to destroy the bills and the original data of the week before?

A. Yes, sir.

Q. And that has been done uniformly for the last fifteen years?

A. Yes, sir.

Q. So that if I ask you here, speaking about Voucher No. 90,531, dated February 7, 1918, what 32313 makes up these "Incidentals, etc.," you would not be able to tell me?

A. I could not, no.

Q. Nor would you be able to produce the paper on which that item is based?

A. No, sir.

Q. You do not know who Margaret Cribben is, or Frances—

The Master: Well, wait a minute. Maybe he does know who Margaret Cribben is. There is a Margaret Cribben on that.

The Witness: I do not identify the name.

The Master: What is the next name?

Q. Do you know who the copies of stenographic records were furnished by in this item $75?

A. No.

Q. Well, if I proceed to ask you about such items all through the various vouchers which have been today produced in court, would your answer be that you did not know?

A. It would have to be.

Q. What?

32315 A. It would have to be.

The Master: As to every item?

The Witness: Well, not every item; I have not seen the items.

The Master: Let us take this voucher which is dated February 26, 1918.

Mr. O'Brien: Just a minute, your Honor, I will get my mind diverted if you conduct an examination just now.

The Master: Maybe it would be well to have it diverted.

By the Master:

Q. The first item is towels for office, $2. Can't you

32316 tell us what that is?

A. Yes, sir.

Q. What is that?

A. Towels for the office.

Q. The next item is Metropolitan Life Insurance Company, February rent.

A. Yes, sir.

Q. What is that?

A. The rent of the office.

Q. Whose office?

A. In the Metropolitan Life Building; my office.

Q. You have a separate office over there?

A. Yes, sir.

Q. The New York Telephone Company, $21.60. What was that?

A. Telephone service.

Q. The Argus Press-Clipping Bureau, what was that?

A. Press clippings, the ordinary clippings that come in from the press bureau.

Q. What do you do, cut out everything they say about the Gas Company?

A. Yes, gas and electric. 32318

Q. Gas and electric?

A. Yes, sir.

Q. General Shorthand Reporting Company, copies of hearings. What hearings were those, do you know?

A. Well, I could not tell you, except hearings perhaps before the Commission, or in court. I could not tell you now.

Q. News Service, $20. What was that, if you remember?

A. I could not remember.

Mr. O'Brien: Won't you talk up a little louder, Mr. Livingston? Don't be afraid of me. 32319

The Witness: I am not a bit afraid of you: I like you very much.

Q. Esther Levy, who is she?

A. I think she was an employee at that time.

Mr. O'Brien: Well, don't say it unless you believe it.

The Witness: Well, I think she was.

Mr. O'Brien: Either you know it or you don't.

Q. I notice, by the way, on these vouchers that the items that are referred to as towel service and so on say "Beginning February 5th"?

A. Those are monthly payments.

Q. There are three names here under date of February 5th, Esther Levy $9, Margaret Cribben $12, and Frances B. Magida $35. Who are those?

A. Employees.

Q. Of yours?

A. In my office.

Q. This $9, was it for a week or a month?

A. A week.

Q. How is it you only charge for one week out of the whole month?

A. These are not made out monthly; they are made
32321 out weekly.

Q. And this Frances E. Magida was an employee of yours, too?

A. Yes.

Q. H. Rubin, Stationer. What was that?

A. Morning newspapers, envelopes.

Mr. O'Brien: Where does he keep his stand?

The Witness: Right in the building there, a news stand.

Q. He sells newspapers?

A. Newspapers Rosen; and the other man is a stationer.

Q. Then comes this "Copies of stenographic rec-
32322 ords" that Mr. O'Brien spoke about, and then without date it says, "Incidentals, etc., $20."

A. Those are various cash expenditures that went along during the period of a week or ten days.

Q. Did you keep a record of those?

A. I did at the time.

Q. So there are some of these things that you can tell about?

A. Why, the fixed charges there.

By Mr. O'Brien:

Q. I assume from what you said that you cannot produce the underlying papers in support of this item

on Voucher 893, services to January 31, 1918, $791.66?

A. That is my salary at that time.

Q. Is there anything added to your salary in that amount?

A. No.

Q. What is your salary?

A. Now, it is $12,000.

Q. $12,000?

A. A year.

Q. Do you pay anything out of that; are you supposed to disburse moneys out of that, or any ex- 32324
penses to be deducted from it?

A. No.

Q. How much time do you give to the work of this company?

A. Well, it runs anywhere from ten to twelve or fourteen hours a day—sixteen hours a day and Sundays at times. All my time.

Q. Do you do investigating work for the company?

A. Investigating?

Q. Yes.

A. No.

Q. Of any kind?

A. I do not know as I do. 32325

Q. Have you done any investigating work recently in the west?

A. I was out in the west.

Mr. Ransom: Objected to as immaterial.

Q. What is that?

A. I was out in the west.

Q. And your time was charged up to the company?

A. Why, I suppose it was.

Q. What were you doing there for the complainant company that took you out west?

Mr. Ransom: I object to it as immaterial.

The Master: I will allow it.

A. I went out there and got some copies of some hearings in the Springfield Gas case, I think it was—yes.

The Master: Illinois?

The Witness: Illinois.

Q. You had to go out there to get them?

A. Yes, sir.

Q. Did you go to Vincennes, Indiana?

A. No, sir.

32327 Q. You went out there to investigate Mr. Little, did you not?

A. I went out there to get the copies of the stenographic report of those hearings.

Q. Answer my question, Mr. Livingston, and we will get through more quickly; you went out west to look up Mr. Little, didn't you?

Mr. Ransom: Objected to.

The Master: Who is Mr. Little?

Mr. O'Brien: He is a witness to be in this case, your Honor.

Mr. Chambers: For the defendants.

The Master: I will let him answer.

32328 Q. Tell me where you went on that trip?

A. I went to Chicago.

Mr. Ransom: Objected to as immaterial.

Q. You went to Chicago?

The Master: Wait a minute.

By the Master:

Q. Were you to Vincennes, Indiana?

A. No, sir.

Q. Did you go out to check up on Mr. Little before he got here?

A. Not exactly; no, sir.

By Mr. O'Brien:

Q. You went to St. Louis?

A. No, sir.

Q. Did you communicate with Mr. Allison in St. Louis and ask him to look up Mr. Little?

A. No, sir.

Q. Where did you go in Chicago?

Mr. Ransom: Objected to as immaterial.

Mr. Hayward: May I interrupt here. If the Master please, the experts for the Commission up there would like to work on those company books that are over here on the floor for to- 32330
morrow's sessions, and we have asked Judge Ransom if they could be sent back up and he said he might have to use them here today. I cannot conceive of any possible use for them today.

The Master: No; they are of no use here today. Do not give him another possible excuse for delay.

Mr. Ransom: Well, I don't know that they won't.

The Master: Do not give them any further excuse for a delay. Give them these books; let them have them. 32331

Mr. Hayward: He don't gain anything by being little, anyhow.

Mr. Ransom: Which little?

Q. Where did you go and what did you do in Chicago?

Mr. Ransom: Objected to as immaterial. This company has a right to prepare for trial.

The Master: I think I will sustain that. I will let you bring out that this man for his salary of $12,000 a year has been doing investigating work and went out west and spent several days

or several weeks in an effort to be prepared, to have Mr. Little's testimony when he got here. A perfectly proper procedure.

Q. Have you done any other investigating work for the company at any time?

Mr. Ransom: Objected to as immaterial.

The Master: I will sustain it on that ground.

Mr. O'Brien: I do not mean with respect to Mr. Little; I am asking him a general question.

The Master: Or with respect to anybody.

Mr. O'Brien: Exception.

32333 Q. Did you get any orders from anybody to destroy these records weekly?

A. No, sir.

Q. Does Mr. Carter of this company know that you destroyed them?

A. I do not know.

Q. Did you ever talk to him about that?

A. Never.

Q. Did you discuss with Mr. Carter or counsel in this case the question of your being called to account for these underlying records?

A. No, sir.

Q. Did Mr. Cortelyou give you permission to de-

32334 stroy these records?

A. No, sir.

Q. What rule is there made as to the limits of the amount of money which you may use for expenses?

A. I have never had any limit fixed.

Q. You use what in your discretion you see fit to use?

A. Yes, sir.

Q. And turn in your bill for it?

A. Yes, sir.

Q. How many people have you under you?

A. Four.

Q. They are Miss Levy and Miss—

A. Well, no, Mr. O'Brien.

Q. And Miss Magida?

A. She is still there, but the Levy girl, no, not now.

Q. These four are what, stenographers?

A. Stenographers and file clerks and one is a writer.

Q. Then you have a mimeograph machine?

A. Yes, sir.

Q. These girls after you give them a copy turn out the boiler plate that you distribute throughout the 32336
city?

A. Boiler plate?

Q. Yes.

A. I am not a mechanic.

Q. Aren't you considered a good mechanic?

A. It all depends on the interpretation of the word mechanic.

Q. Well, the newspaper boys credit you with being a good mechanic, do they not?

The Master: Objection sustained.

A. No. It is rather flattering, I think.

The Master: Objection sustained. Let us get down to this case. 32337

Q. How much of your time is spent in getting up newspaper articles about the affairs of the company?

Mr. Ransom: Objected to.

The Master: I will allow it.

A. Oh, it is infinitesimal.

Q. Infinitesimal?

A. Yes, sir.

Q. You have written a good deal about this case since it started in trial?

A. Nothing at all; not a word.

Q. Who wrote it?

The Master: Who wrote what?

Mr. O'Brien: The articles?

The Master: Which articles?

Mr. Ransom: The Evening World's?

Mr. O'Brien: About this case that emanated from Mr. Livingston.

The Master: The article of Saturday night?

A. Not a soul.

Q. Did you ever turn out or write an article, or have written an article in relation to the progress being made in this case?

32339 A. No, sir.

Q. Based upon a letter that Mr. Ransom sent to Judge Mayer?

A. No, sir.

The Master: What is the purpose of this inquiry, Mr. O'Brien?

Mr. O'Brien: The whole thing goes into the question of the use of his time, your Honor.

The Master: You know I would rather adjourn court than sit here and listen to a lot of nonsense.

Mr. O'Brien: It is the use of his time.

Q. Can you say what incidentals these are on

32340 voucher 893?

A. Certainly not.

Q. Can you say what the incidentals are on this voucher 3350?

A. No, sir.

Q. Can you say what these incidentals are on the voucher 1003?

A. No, sir.

Q. Can you state what the money was spent for which is entitled "Incidentals" on this voucher 1492?

A. No, sir.

Q. Or on the voucher 3695? Your answer is no?

A. Well, you did not say what that was.

Q. Incidentals, etc.

A. No, I could not.

Q. Did any of the officers of the company ever ask you what these incidentals were?

A. No, I don't think so.

Q. Well, I suppose you get some kind of directions from somebody over you as to just how you are to operate, don't you?

A. No, sir.

Q. Does Mr. Cortelyou or Mr. Carter or Mr. Addicks tell you just what to do? 32342

A. No, sir.

Q. You just assume what your duties are?

A. Yes, I have grown up with the business and I do not have to get directions.

Q. Well, from whom have you ever gotten directions?

A. Not a soul.

Q. When you went with or entered the employ of the company, what was the understanding?

A. It was simply to come there and be the official spokesman for the company in giving out the information for publication. 32343

Q. That they might want to give the public?

A. No, the requests from the newspapers.

Q. Do you mean to infer, Mr. Livingston, that you only give newspaper matter for publication when they ask for it?

A. I think pretty near all that. I don't run any press bureau.

Q. Your answer would be the same if I asked you about the items in incidentals on all of these vouchers?

A. Yes, it would, Mr. O'Brien.

Q. There is not anything further—

A. No, there is not anything further.

Q. (Continuing.) That you can give us to enlighten us on them?

A. Not a thing.

Q. Would the bill or the date or the allocation of other items on the bills perhaps refresh your memory as to any of these incidentals?

A. I do not see how they could, really.

Q. I could not serve any purpose so far as getting information is concerned—

32345 A. No, you could not.

Q. (Continued.) By asking you what the incidentals were in the various bills?

A. No, sir.

Q. You have here the Harlem Board of Commerce, advertisements. You are a member of that board?

A. Yes, sir.

Q. You have been for some time?

A. Yes, sir.

Q. You partake in its deliberations?

A. Well, no, but I have attended meetings.

Q. It is just a nominal membership?

A. That is all.

32346 Q. Your office is not in the complainant's office building at Irving Place?

A. No, sir.

Q. You have a separate office in the Metropolitan Life Insurance Building?

A. Yes, sir.

Q. And the rent of that is paid out of the general check that is turned over to you?

A. Yes, sir.

Q. From time to time?

A. Yes, sir.

Q. Out of which you make your disbursements?

A. Yes, sir.

Q. And you have had that office there for how long?

A. The present location in the tower about a year and a half. Before that I was down on the sixth floor.

The Master: For how long?

The Witness: About thirteen years.

Q. Do you recall what these expenses were in Washington on the 11th day of June, 1918?

A. No, I do not recall. No, sir. 32348

Q. Is Jessie B. Payne a stenographer?

A. She is not with me now. She was a writer.

Q. She was a writer?

A. Yes, sir.

Q. She got $25 a week?

A. Yes, sir—well, I think so.

Q. What is this Harlem Magazine, in which you inserted an ad?

A. It is published by the Board of Commerce, the Harlem Board of Commerce.

Q. By the Harlem Board of Commerce?

A. Yes, sir.

Q. I notice from time to time on these bills here 32349
"coal reports and fuel statistics."

A. Well, I got quite a lot of that material together at the time of the shortage of coal and oil in the early part of 1918, conditions throughout the country and hereabouts.

Q. Here is your salary here in August, 1918, $1,583.32, as against $791 in the other months.

The Master: It looks like two months.

A. It looks like doubling up; I don't know.

Q. Do you think it was paid monthly some months?

A. Yes. That is two months.

Q. Has it always been $12,000?

A. Unfortunately, no.

Q. The rent up there is what, in the Metropolitan Life Building?

A. I could not tell you, Mr. O'Brien.

Q. Well, you have here in 1918, $110.41, for the month of August. That was the then rent per month?

A. Yes, sir.

Q. Do you know whether the lease expired since then, whether the rent has been raised?

A. No, it has not. The lease runs from October
32351 to October, and it has not been changed since that time.

Q. You are not paying more now, then?

A. I think not.

Q. Well, do you do work for other people and other companies?

A. No, sir, I haven't the time.

Q. I suppose your memory is not green on this question of the Town Taxi Company, trip to Hunts Point, $16?

The Master: When was that?

Mr. O'Brien: September 3, 1918.

A. I think I sent photographers up there to make
32352 some photograph.

The Master: Of what?

The Witness: I was trying to think what it was.

Q. You got these coal reports every month. There seems to be $50 here every month for coal reports?

A. Yes.

Q. Government reports, are they?

A. In part.

Q. You did not have to pay for congressional documents?

A. Oh, I would not say they were congressional documents. They were various hearings.

Q. You mean you got the stenographic reports?

A. A great many of them.

Q. Well, did you get copies of these hearings together with the minutes that are purchased by the general office of the complainant?

A. No.

Q. Take the Public Service Commission hearings, these bills of the General Shorthand Company?

A. I get a great many of them.

Q. You get them? 32354

A. Yes, sir.

Q. You purchase many of them?

A. Yes.

Q. Irrespective of what they get at the general office?

A. I don't know what they get there.

Q. You had furnished to you copies of the minutes of this trial?

A. Yes, I borrowed copies and read the case.

Q. You have a copy of your own, haven't you?

A. No, I do not.

Q. Where do you get your own copy?

A. Down at the main office, it is loaned to me. 32355

Q. Well, you have the whole record before you?

A. No, I have not. I get it piecemeal, day after day.

Q. As it comes up?

A. Yes, sir.

Q. Can you explain whether this item, "Stern Brothers, rugs, $143.50," is duplicated down below under another account where it says, "Stern Brothers, Rugs and Stationery, $143," or was it two sets of rugs?

A. Two sets. At the time I was compelled to move upstairs.

32356 R. E. Livingston. Direct.

Q. You needed more rugs?

A. I needed a whole new outfit there.

Q. Can you explain this item here, "United Board of Business Agents, one-quarter P, ad." Is that some organ of the business agents?

A. Yes, it is the—I do not know whether it is the Plumbers or Gas Fitters, quarter of a page ad.

The Master: You attend to the advertising matter that is put out?

The Witness: Every bit of it.

The Master: Newspaper advertising.

32357 The Witness: Every bit of it.

The Master: Do you prepare the material?

The Witness: I prepare it and sketch out the pictures.

Q. What is this ad in the 15th of October, 1918, entitled, "The Steward, one page ad, September and October, 850"?

A. That is a publication called "The Steward," as its name implies there. It is a hotel publication.

Q. A hotel publication?

A. Yes, sir.

Q. Just pay so that they will keep poison out of the soup, or what is the reason for putting that ad

32358 in, if there is a reason?

A. Because we are after the hotel business.

The Master: You want to get the stewards interested in using gas ranges?

The Witness: You bet.

Q. There is quite a little money spent to get their business, the stewards'?

A. That I don't know anything about, I don't have anything to do with it.

Q. Who does disburse the money of the complainant company to the stewards in the hotels and clubs of this city?

Mr. Ransom: I object to it; it is perfectly improper.

A. I don't know.

The Master: It has been answered, the witness says he doesn't know.

Mr. Ransom: That doesn't end the responsibility of counsel who asks such questions.

Q. Mr. Willyong is a writer, I assume?

A. Yes, sir.

Q. And he was on your permanent payroll?

A. Yes, sir.

The Master: You prepare the electric ads, too? 32360

The Witness: Oh, no.

The Master: Only gas?

The Witness: Only gas.

Q. And have the electric companies a press agent of their own?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Have the electric companies any employee doing the same kind of work you do for the Consolidated Gas Company?

Mr. Ransom: Objected to.

The Master: Same ruling. 32361

Mr. O'Brien: That goes out, I assume, under your Honor's ruling that we are not concerned in this case with what they do in the electric companies that are affiliated with the complainant company?

The Master: No.

Q. I see Tschantre is in here pretty nearly every month. He is in here every month, in some item called "Puzzle"?

A. Yes, sir.

Q. He is a puzzle maker, I suppose?

A. Yes, sir.

Q. You pay him so much a month for getting up puzzles for consumers to work on?

The Master: What is that, the puzzle you have in logic?

The Witness: Yes.

Q. Do you know what kind of work Mildred Meyers did for the company?

A. She took Mr. Willyong's place.

Q. She is a writer, too?

32363 A. Yes.

Q. What was the occasion of getting three thousand copies of the New York Commercial on December 10, 1918?

A. I could not tell you, Mr. O'Brien, right now.

Q. You can explain then, that item of $300?

A. No, I could not.

Q. Can you explain this expenditure of $350 for Legislative Index Publication Company, December 2, 1918?

A. Well, that is the regular service up there at Albany for furnishing copies of bills and decisions and the resolutions, and all that.

32364 Q. Do you know what this organ or publication is The Vatel Club, Incorporated?

A. Yes.

Q. One page ad, $100?

A. Yes, I think that is the French cooks, chefs.

Mr. O'Brien: Tomorrow I will get the 1919 vouchers down and ask for a half-hour's time.

The Master: Are the 1919 vouchers here?

Mr. Ransom: I thorght I brought them down.

The Master: Here they are, right here.

Mr. Ransom: No, I think these are 1918.

The Master: Have we got any 1919 vouchers? If you have not, telephone up for them, I am going to stay here and get through with them today and I will declare a recess until they get here.

Mr. Ransom: They were not on the list that was given us at ten minutes of one.

The Master: Telephone up and let's have them. I don't care about the list. Telephone up and get them here. We will have a recess until they get here.

Mr. Ransom: All I wanted to note was the 32366
reason we did not have them here is because they did not request them before recess.

The Master: Well, we will take a recess until they get here.

Mr. Ransom: The 1919 vouchers have arrived.

The Master: Hand them to Mr. O'Brien.

By Mr. O'Brien:

Q. Mr. Livingston, what you have testified with reference to the practice in reference to the disbursements, sending in of receipted bills to the auditing department and getting back a check in bulk to cover the total amount of those bills, holds good with regard 32367
to the 1919 vouchers?

A. Yes, sir.

Q. And also the practice of destroying them weekly as they are received back from the auditing department?

A. Yes.

Q. The same answers would be made in answer to questions that I might ask you with reference to the incidental expenses set forth in these vouchers for 1919—you wouldn't be able to tell us what they were?

A. Just those petty cash expenditures.

Q. Well, they are called incidentals here?

A. Petty cash, yes.

Q. Whatever you may call it, petty or non-petty, the answer will be the same?

A. Yes, sir.

Q. You have here, "Membership in the Merchants Association"?

A. Yes, sir.

Q. $50?

A. Yes, sir.

Q. Dues for a year?

32369 A. Yes, sir.

Q. And that is not included in the membership that the complainant company has in the Merchants Association?

A. No, sir.

Q. You know that there are six memberships in the Merchants Association on the part of the complainant company?

A. No, I didn't.

Q. Who is Mr. H. J. Gonden, if you know him?

A. Publisher of "The Gas Record" in Chicago, a technical paper.

Q. Then he is the man to whom this payment of

32370 $148.88 was made on the 30th day of January, 1919?

A. Apparently.

Q. You have a membership in the Real Estate Board of Brokers, I see?

A. Yes, sir.

Q. For which dues are paid annually?

A. Yes, sir.

Q. Do you have a membership also in the National Municipal League, and the Academy of Political Science?

A. Yes, sir.

Q. On which you paid dues which are included in these vouchers?

A. Yes, sir.

Q. Is Harry Springstead a veteran, one of the employees of the company who served in the war?

A. Yes.

Q. Mr. Willyong was on your payroll, I suppose?

A. Yes.

Q. During the whole of 1918?

A. I think he has been away from me for about a year.

Q. You have a payment to him made on March 4, 1919, "Articles and Editorial Work on March 'Gas Logic.'" $100. He was with you then, or do you think he left just after that? 32372

A. No, he left me before that.

Q. And left the article behind for which you made that payment?

A. No, work he did for me in connection with that.

The Master: Special work?

The Witness: Special work.

Q. Whose speech was it that you bought from the Law Reporting Company on "Public Service," in April of 1919? 32373

A. I can't say at this distance and time.

Q. You increased your payroll during 1919? You had more employees during 1919, than you had in the year previous?

A. Well, they were shifted there on account of the general unrest. I think I had just about the same. Sometimes I was trying to get along with three, sometimes I was down to two. I think there are no more now than I have always had.

Q. Do you recall what kind of a paper this was in which you placed an ad amounting to $40, New York County Civil Employees Benevolent Association?

A. It is an annual entertainment given by them, and for several years that advertisement has been placed with them. I think the headquarters are over in the building with you, in the Municipal Building.

Q. Have you got your expenditures for the year 1919, so summarized that you can tell us how much you paid for newspaper advertising?

A. No, I have not, as yet.

The Master: It can be summarized from these bills, can't it?

The Witness: Oh, no.

32375 Q. They are not included in your vouchers, that is, the newspaper advertising?

A. No, sir.

Q. They are independent expenditures?

A. Yes, sir.

Q. Let me ask you in that connection, do these vouchers which cover payments made to you cover all of the payments made by the company to you for disbursements that you have made?

A. Absolutely.

Q. Every one of them is covered by vouchers?

A. Yes, sir.

Q. Have you seen the list of vouchers that I turned

32376 over to the counsel for 1918?

A. Just in the pile as you had it.

Q. Is there any other payment made to you, under any other title, or through any other account, any moneys to be used in connection with your bureau?

A. No, sir.

Q. Is Nettie A. Dixon a writer?

A. Yes, but not with me, now.

Q. And her salary was $120 for every two weeks, or $120 a month?

A. About $120 a month; I think she got $30 a week.

Q. You keep a collection of clippings?

A. Yes, sir.

Q. Have those been preserved, those clippings that you have bought from week to week?

A. Not all of them. I single out those that are of any value and try to retain those.

Q. Can you state what this payment was made for on September 30, 1919, to E. D. Sullivan, for gas case statistics?

A. I cannot at the moment.

Q. How did you come to purchase post cards for the branch office? I notice here a payment of $66.50 32378
on November 11, 1919?

A. It was in connection with a large order I gave advertising gas heaters at that time.

Q. Were these picture postals that were sent out?

A. A picture of the gas heater in the lower left-hand corner, with the text, and then the face of the card was printed with the address of the various branch offices.

Q. Did any of your superiors suggest the advertising in the Bloch Advertising Service, $412.20, or was that a matter or disbursement made within your discretion?

A. Within my discretion and on my advice. I dis- 32379
cussed it with Mr. Cortelyou.

Mr. Ransom: Theatre programme advertising.

The Witness: The movies up from 77th Street to 185th, in that little neck of land where they have those community houses—eleven movie theatres.

Q. When was your salary made $12,000 a year, Mr. Livingston?

A. Mr. O'Brien, I could not tell you; but I think it was in the latter part of last year.

32380 R. E. Livingston. Direct.

Q. Prior to that time it was how much?

A. $9,000—$9,500.

Q. Then we may assume that it was sometime within the last three months of 1919?

A. I would think so—no, I think it was a little bit further back than that. Probably the last six months of 1919.

Q. Do you recall this trip to Washington where you made some disbursements, in 1919?

A. I did not go to Washington, Mr. O'Brien.

Q. This was on the 11th of June, 1919, where
32381 there were expenses of $95 and $35 for incidentals.

A. That was in connection with oil and coal records that I got from Washington.

Mr. Ransom: It does not say anything about a trip to Washington.

Mr. O'Brien: June 11th, Washington, D. C. expenses, $95, incidentals, etc., $35.

The Master: What was "Etc."?

The Witness: That is incidentals, etcetera.

Q. That, then, was not a trip; it was for things that you got from Washington, was it?

A. Yes, sir.

Q. Why didn't you call it all expenses? Why
32382 split it up into incidentals?

Mr. Ransom: That does not appear that that was so done. That is simply the last item and the other is that petty cash, which does not seem to have any relation to the Washington matter.

The Master: Why don't you let the witness say so.

Q. Look it over (handing witness paper).

A. They are two different items, the incidentals is the usual petty cash item, and the other is the—

The Master: Expense you went to for something in Washington?

The Witness: Yes, sir.

Q. Are these expenses of the Legislative Index Publishing Company fixed amounts for the Legislative session?

A. Yes, sir.

Q. Or is it so much a month?

A. For the term.

Q. Well, you had one expenditure of $350, as I have indicated?

A. Yes, sir. 32384

Q. On December 2nd of 1918.

The Master: 1918?

Mr. O'Brien: Yes, and then on February 27th of 1918, copies of bills, etc., $350.

The Master: Show that to the witness. February, 1918?

Mr. O'Brien: Yes.

The Master: And December, 1918?

Mr. O'Brien: Yes, they are two of that same amount (handing witness).

A. Undoubtedly for extra services rendered. I think at that time that was when I asked them to send me another copy of the records up there. 32385

Mr. O'Brien: The rest of my questions, your Honor, would be along the same lines as I have just asked, and possibly be a repetition. I will embody that in an argument or a summary, and that will be all.

The Master: Is there anything else that the defendant can offer this afternoon?

Mr. Ransom: I have just a few questions of Mr. Livingston.

The Master: Go ahead.

32386 R. E. Livingston, Cross.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Livingston, you and your staff have charge of the preparation, publication and distribution of "Gas Logic"?

A. Yes, sir.

Q. And at times special articles are written for that publication or special drawings or photographs are obtained for that publication for persons outside of your staff?

A. Every month.

Q. Do you and your staff also prepare all of the
32387 advertising in connection with the use of gas and gas appliances and the like, as they appear in the newspapers and in various trade publications?

A. I do every bit of it myself.

Q. And the cuts and the drawings that appear in connection with those ads are also prepared by you and your staff, or under your direction?

A. Under my personal direction.

Q. And the ads which appear on gas bills and the drawings that appear on gas bills, are they likewise prepared by your staff?

A. Every bit of it by myself.

Q. And circulars that are sent out to consumers?

32388 A. Every bit.

Q. The bills of the printer who prints "Gas Logic," those are paid directly by the complainant company?

A. Yes, I send them right down to them.

Q. And the newspaper advertising bills are likewise paid directly by the complainant company?

A. Yes, sir.

Q. You personally write these ads?

A. I do, and sketch the pictures.

Q. And the same is true with respect to ads and other materials, exploiting the use of gas, that appears in "Gas Logic" in large part?

A. I do, every one of them.

Q. These vouchers which are on Mr. O'Brien's list and which have been produced here are the vouchers for current disbursements in your Madison Avenue office?

A. Yes, sir.

Q. Your publication and advertising office has never been transferred to the general office building?

A. No, sir.

Q. These items represent the rents and telephone and payroll and minor disbursements in your office?

A. Yes, sir.

Mr. O'Brien: I understood the witness to say 32390
that he did not work for anybody else, did not conduct any other business. You have asked him about his advertising.

Mr. Ransom: Well, it is his office.

Q. You are the advertising agent for the complainant?

A. The manager, advertising manager. I am not an agent.

Q. In 1918, and for a time in 1919, were you obtaining information regarding coal and oil and similar materials for the use of the executive officers of the company?

A. Volumes of it. 32391

Q. During that period of shortage of coal?

A. Yes, sir.

Q. It was part of your duty to obtain that information

A. Absolutely.

Q. For Mr. Addicks and Mr. Gawtry and other executive officers of the company?

A. Yes, indeed.

Mr. Ransom: I think that is all.

RE-DIRECT EXAMINATION BY MR. O'BRIEN:

Q. What information did you actually get, Mr. Livingston?

A. About what, sir.

Q. What information did you get? Start with the Washington publications. They are all free, are they not, the senatorial documents and those of the House of Representatives

A. Oh, I did not ask for them.

Q. The hearings before the Senate Committee on the conditions of coal, held last year, in three volumes;
32393 you have seen that, you did not have to pay for that, did you?

A. No, I did not bother with the volumes.

Q. Could you not get a lot of this by writing any of the congressmen from New York—a lot you were paying money for?

A. Well, they would be up here, possibly.

Q. Who would be up here?

A. The congressmen.

Q. You would not say that of Tom Smith, would you?

A. No, I would not say that of Tom.

Mr. Ransom: This company cannot afford
32394 to wait until those things appear in documents.

Q. No, but the documents appearing in the departments on those matters, and all the other publications, are sent free upon request, are they not?

A. I think the majority of them are; yes, sir.

Q. What is there that you did have to pay for that you received from Washington?

A. Well, I got a great deal of information about hearings and the conditions that were then existing in connection with the supply of coal and the supply of oil, the prices and everything, on all kinds of subjects.

Q. Could you get any better compendium on the prices of coal and the conditions of mining than are in these records I have referred to, before the senate committee?

A. I was getting them every day.

Q. From whom?

A. From a friend of mine in Washington.

Q. And you paid him for it?

A. I certainly did.

Q. A newspaper man?

A. No, he was not connected with a newspaper then.

Q. What did he send you, something that he had 32396
gleaned in turn out of these records I spoke of?

A. No. What is happening today I could have tomorrow morning.

Q. Then you keep him on your payroll to watch the coal market in Washington?

A. Oh, no, he was not kept on the payroll. I paid him whatever I thought the services were worth and kept him on the jump.

Q. They were matters that appeared in public records, were they not?

A. Subsequently.

Q. Then you communed with Mr. Gawtry on the subject, or Mr. Addicks, as it related to either coal 32397
or oil?

A. Yes, and Mr. Carter I suppose at times, and Mr. Cortelyou.

Q. You brought them in this prompt information from your friend in Washington?

A. Yes, sir, the first thing in the morning, every morning.

Q. Like the pancakes from Aunt Jemima.

A. Hot off the griddle.

Q. Have you got the mailing list of "Gas Logic"?

A. Such as there is, yes.

Q. What kind of a list is it?

A. Well, now, I will tell you. We have a certain number, a few to whom it is mailed every month. Then we take the "Blue Book," starting at Washington Square, and I take a section of the west side of the city up to a certain point for this month, then take another section the next month and another section the next month, and in that way make two or three or four trips around the island into the private homes where the canvassers would not be able to get and see the people—large apartment houses and
32399 private houses—mail them. Practically hundreds.

Q. Well, could you bring down to us tomorrow morning the list for 1918 and 1919, to whom you sent these picture babies?

The Master: I won't permit the witness to do it, because I won't take it. I am going to finish with the witness today.

Q. Have you preserved it, Mr. Livingston?

A. Well, it is just as I told you, it is a printed Blue Book and I give that to the young girl.

The Master: You better explain what the blue book is, Mr. Livingston.

Q. You mean the social register?

32400 A. No, it is not quite so restricted; it takes in a few more. This book is supposed to have the names of the better class of people all through the city.

By the Master:

Q. It is a regular publication?

A. A regular publication.

Q. A book that anybody can buy for $5.00 or some such thing?

A. It used to be the Phillips Elite Directory and now it is Daw's, I think it is Daw's—a volume about that thick (illustrating). She will take in an apartment house every other name in that apartment house

this month, and then she will take all the private residences in that section. The next month we will take another section just about that, so the blue book is my mailing list so far as canvassing is concerned. It is the inside canvassing.

Mr. Ransom: To reach people you cannot reach with the house to house canvass?

The Witness: Why, a man could never get into them.

Q. Like Cascarets, it works while they sleep?

A. No, it seems to be better than that.

Q. It is not for sale anywhere, "Gas Logic"? 32402

A. No, sir.

Q. You keep some in the office building there so people going in and out of this ornate structure on Irving Place can take them?

A. Yes, sir, we give them away.

The Master: You keep them in all the branch offices?

The Witness: Every branch office in the city; and then when I have an article in there like the Red Cross, their activities, or the Knights of Columbus, or something of that sort, I send them a bundle, and then to every branch office in the Knights of Columbus and to the Red Cross and 32403 the other organizations.

Q. Then you keep your ads in the different organs, the Culinaire Philanthropique and the other collections and groups of people, like the Record and Guide, the Harlem Chambers of Commerce and so on, for the promotion of friendly atmosphere?

A. No, I am trying to sell the goods for the company.

Q. You are the expert on atmosphere, are you not? Now, tell the truth, Mr. Livingston.

Mr. Ransom: I object to that.

The Master: Wait a minute. Let Mr. Livingston say what he does all these things for.

Mr. O'Brien: I would like to have him answer my question; it is in concrete form.

The Master: He is going to answer it.

A. The promotion of the company's business and its interests.

By the Master:

Q. What do you expect to accomplish by all this advertising in these papers and magazines and the rest of it?

32405

A. Why, we do a very large—for instance, in the hotels and restaurants we do a very, very large business, and the advertising this month might pertain to steaming tables and the coffee machines and all that; the next month it might be on ranges.

Q. Do I understand that the purpose of it is to sell your merchandise?

A. Absolutely.

Q. That is what I am trying to find out.

A. Absolutely.

Mr. Ransom: And develop the use of gas and encourage people to use gas?

32406 The Witness: Of course.

By Mr. O'Brien:

Q. And incidentally use money?

A. Use money?

Q. Yes.

Mr. Ransom: That is objected to.

The Master: Objection sustained.

A. Well, they have to use money to pay for the use of the gas.

Q. Do you do any work for the electric light companies?

Mr. Ransom: Objected to as immaterial.

The Master: I will allow it. He has already answered it, but I will let him answer it again.

Mr. Neumann: He said he did.

The Master: He did not.

Mr. Neumann: Then we had better get the witness's answer.

The Master: He said he did not. Isn't that what you said, Mr. Livingston?

The Witness: I started to say something, if your Honor please; I do not recall.

The Master: Well, say it.

The Witness: I do some work for the electric 32408
light companies.

The Master: I understood him to say he did not.

Mr. Neumann: No, he said that he did.

By the Master:

Q. Are you paid extra for that?

A. Oh, no.

Q. That is included in the salary that you get from the Consolidated?

A. Oh, it is very little.

Q. Is that what you said was infinitesimal?

A. Yes.

Q. What kind of work is it; let us hear what it is? 32409

A. Why, I cannot bring anything to mind just at the present moment. I know every once in a while Mr. Lieb or somebody will call me down to have a talk with him on something or other.

Q. Do you mean about advertising?

A. It may be advertising or it may not.

The Master: Is there anything else the defendants have to offer this afternoon?

Mr. O'Brien: No, your Honor. Your ruling that you made today affects some of the witnesses we may call.

The Master: I hope it affects them by shortening this case.

Mr. O'Brien: And I will endeavor to adapt myself to the ruling and make my record tomorrow.

The Master: Under the circumstances, there being nothing further to be offered by the defendants this afternoon, the Court will stand adjourned to 9:30 tomorrow morning, notice being given to the defendants that in view of the failure to occupy full days, I shall probably have
32411 to run on evenings to the end of the week and from then on continuously.

Mr. Ransom: And Saturday.

The Master: And Saturday.

Adjourned to Tuesday, January 20, 1920, at 9:30 A. M.

Last Complainant's Exhibit No. 456.
Last Defendants' Exhibit AA192.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, Etc., *et al.* 32413

Before ABRAHAM S. GILBERT, Special Master.

New York, January 20, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 32414
MR. O'BRIEN, of Counsel for defendant Swann.

Mr. Ransom: I want to put on the record my protest against the bringing in of witnesses like Mr. Wall of the National City Company, who has nothing to do with the case, and whose testimony under the rulings of the Master has nothing to do with the case. He has been subpoenaed here 32415
to sit around, and counsel who subpoenaed him does not even take the bother to come to court.

The Court: What time is the subpoena for?

Mr. Vilas: 9:30.

Mr. Ransom: 9:30.

32416

The Master: Present the subpoena.

(Mr. Ransom hands to Court.)

The Master: The stenographer will place on record that Mr. Charles S. Wall has appeared in court in pursuance of a subpoena served on him returnable the 20th of January, 1920, at 9:30 in the morning, in this cause. I understand you did not subpoena him, Mr. Chambers?

Mr. Chambers: Why, the defendants did, and we want him here and want him to stay. Why should counsel for the complainant in court interfere with our witnesses?

32417 The Master: Then proceed with his testimony.

Mr. Chambers: Why, no, I have got something else here.

The Master: But I understand Mr. Wall is a representative of the National City Company, and I assume it is on the line of Mr. O'Brien's previous examination. You will proceed with him or I will excuse him.

Mr. Hayward: Your Honor, I do not know what Mr. Wall is brought here for; I would not have subpoenaed him.

The Master: He is subpoenaed here for 9:30.

Mr. Hayward: I would not have subpoenaed
32418 these people, not one of them, and put him on the stand. On the other hand, Mr. O'Brien may have a very good reason, and you and Judge Ransom have no right to judge in advance why he is calling him.

The Master: I want a very frank statement here as to who subpoenaed him.

Mr. Hayward: I did not subpoena him.

Mr. Chambers: I suppose a process server did.

The Master: Which defendant subpoenaed him—which counsel?

Mr. Chambers: I do not know.

32419

The Master: Did you?

Mr. Chambers: No.

The Master: Did you?

Mr. Hayward: I did not.

The Master: So it must be Mr. O'Brien.

Mr. Hayward: It must be.

The Master: Mr. O'Brien should be here at 9:30.

Mr. Chambers: No, I told him I was ready to go on with some of my proof. I do not think the Court should interfere with our witnesses.

The Master: I do. I do not think it is right.

Mr. Chambers: I take an exception. 32420

Mr. Hayward: This is just a lawsuit and these people brought here. I would not have brought them here, but they are no different from anybody else. Suppose he belongs to the National City Bank, of the Interborough Company, or anybody else—he has been here five minutes; is that any crime?

The Master: But when Mr. O'Brien subpoenaed a witness for 9:30 it is his business to be here.

Mr. Chambers: No, that is unfair to think of. When would we subpoena a witness for?

The Master: Mr. Wall, when Mr. O'Brien is 32421
ready for your testimony you will be telephoned for.

Mr. Chambers: I want to note on the record that at 9:35 counsel for the complainant steps up and interferes with a witness that we subpoenaed, and tries to persuade the Court to force us to call him or excuse him, and I take an exception.

The Master: Proceed. I assume Mr. Wall will answer a telephone call.

Mr. Chambers: It is a procedure I never heard of in a case by the complainant.

32422

The Master: Mr. Wall will come back on a telephone call. He need not sit around here.

Mr. Chambers: After a little bit we will not be able to exercise the right of subpoena.

The Master: You had better leave me your telephone number, Mr. Wall. Mr. O'Brien has got to be here at 9:30 when he subpoenas a witness and he knows I am not going to let him ask any questions.

Mr. Chambers: He has a right to stay away because I am ready to proceed.

The Master: Then go ahead.

32423

Mr. Chambers: He has a right to subpoena witnesses, as I understand it, for the opening hour of the court—a perfect right, and that is the time to subpoena them. We did not interfere with complainant's subpoenaing witnesess. All through this case complainant's counsel has talked with our witnesses, has riled them up; he riled up the Deputy Tax Commissioners. Now he is intertering in this one instance here with a subpoena which we served. Now, that is not right; I do not care what anybody says, I voice my protest against the procedure.

The Master: This case is not being tried before a jury.

32424

Mr. Chambers: I take an exception to the procedure of the Court and the complainant's counsel.

GRANVILLE W. PULLIS, called as a witness in behalf of the defendants, being duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. What is your business, Mr. Pullis?

A. Photographer.

Q. Do you pronounce your name "Pulis"?

A. Pullis.

Q. How long have you been in the business of photography?

A. Eighteen years. 32426

Q. And you take the pictures yourself, do you?

A. Yes, sir.

Q. And did Mr. Maltbie engage you to take some photographs of various pieces of plant of the Consolidated Gas Company?

A. Yes.

Q. And when did you make those photographs?

A. Last Monday, January 12th.

Q. 1920?

A. 1920.

Q. Did he outline to you what points or places he wanted you to take, or the buildings that he wanted you to take? 32427

A. Yes, sir, according to these diagrams here.

Q. He gave you a diagram?

A. Yes, sir.

Q. And you went to the various points and places and then took the photographs?

A. Yes.

Q. And in taking the photographs did you do any trick photography?

A. No, sir.

Q. Do they correctly represent the situation exactly as you found it?

A. Yes, sir.

Q. And you did not change or alter the plates, did you, or the photographs?

A. No, sir.

Q. Or make them different from what they really are?

A. No.

The Master: What distances from the objects did you take the photographs?

32429 The Witness: Well, they vary.

Q. Well, in each one. Take this first photograph I hand you; will you please describe where you took it and what it is, and how far away you placed your camera (handing witness)?

A. Why, I did not set down the distance that I had set the camera from any of the points.

Q. I see. What is that?

A. This here?

Q. Yes.

A. Well, that shows a holder up here at Harlem River Terrace and the Old Fordham Landing Road.

The Master (to Mr. O'Brien): Mr. O'Brien,

32430 a Mr. Wall of the National City Company came here under subpoena returnable at 9:30. I have let him go subject to a telephone call. I doubt very much that there was any sense of keeping him here at all, or subpoenaing him, in view of the ruling I made.

Mr. O'Brien: Well, I want to make the record, your Honor.

The Master: I think you can probably make the record without bringing him here. If you want him here you can telephone to him.

Mr. Chambers: Mr. Ransom interfered and announced the witness was here; and the Court was about to excuse him, I thought.

The Master: Go ahead now.

Mr. O'Brien: Is Mr. Ransom counsel for the National City, too?

Mr. Chambers: Well, he seems to be. I have stated my views on the record.

Q. Does that correctly represent that holder?

A. Yes, sir.

Q. And correctly represent the building and the lay-out there? 32432

A. Yes, sir.

Q. Was that taken inside the Company's property, or outside?

A. Outside.

Q. So when you took it you were not on the premises of the Company?

A. No, sir.

Q. Do you remember which direction of the compass you were at?

A. Looking northeast.

Q. Northeast or east?

A. East.

Mr. Chambers: I offer the photograph in evi- 32433
dence.

Mr. Ransom: No objection.

Marked Defendants' Exhibit AA193.

Q. Now, I show you another photograph, Mr. Pullis. Did you take that (handing witness)?

A. Yes.

Q. Where is the *locus in quo* of that?

A. That is on the old Fordham Landing Road hill, between Sedgwick Avenue and Harlem River Terrace.

Q. And in which direction were you looking when you took the photograph?

A. That is looking east.

Q. And does that correctly represent the holder, the buildings and the layout there?

A. Yes, sir.

Q. And did you change or alter the photograph in any way?

A. No.

Q. Or do any trick photography?

A. No.

Q. In connection with it?

A. No.

Q. And it correctly represents the situation there as you found it?

32435

A. Yes, sir.

Q. On the day you have mentioned?

A. Yes, sir.

Mr. Chambers: I offer the photograph.

Q. Was it taken on the Company's property, or outside?

A. Outside.

Mr. Chambers: I offer the photograph in evidence.

Mr. Ransom: I have no objection. I suppose this would be called a photograph of those lots 100 feet deep—100 feet deep from top to bottom. I offered yesterday to let all these things go in.

32436

Marked Defendants' Exhibit AA194.

Q. I show you another photograph and ask you if you took that (handing witness)?

A. Yes.

Q. What does that represent?

A. It represents the Kingsbridge holder.

Q. Does it truly represent the situation there as you found it?

A. Yes, sir.

Q. Do you recall in what direction you were looking?

A. To the southeast; about south.

Q. Were you on the Company's property when you took that photograph?

A. No.

Q. And any trick photography about it?

A. No, sir.

Q. And you did not alter the photograph in any way?

A. No.

Mr. Chambers: I offer the photograph in evi- 32438
dence.

Mr. Ransom: No objection.

Marked Defendants' Exhibit AA195.

Q. I show you another photograph and ask you if you took that on the day you mention (handing witness)?

A. Yes.

Q. And does that correctly represent the situation there at that place?

A. Yes.

Q. Where is that located—the *locus in quo* of that?

A. East 132nd Street.

Q. Do you remember in what direction you were 32439
looking?

A. West.

Q. Does it correctly represent the situation there?

A. Yes.

Q. And you have not altered the photograph?

A. No.

Q. Nor did you use any trickery in taking it?

A. No.

Q. Where was it taken from?

A. It is taken from the east end of the Company's yard.

Mr. Chambers: I offer the photograph in evidence.

Mr. Ransom: No objection.

Marked Defendants' Exhibit AA196.

Q. Now I show you another photograph and ask if you took that (handing witness)?

A. Yes.

Q. Where did you take it from?

A. The west side of Kingsbridge Road and Sherman Avenue.

Q. You were standing in the public street?

32441 A. Yes.

Q. And not upon the Company's property?

A. No.

Q. Where is the place represented by that photograph?

A. Inwood, Kingsbridge Road and Sherman Avenue.

Q. And does it correctly represent the situation there?

A. Yes.

Q. You have not altered or changed the photograph?

A. No.

32442 Q. Nor did you use any trick photography in taking it?

A. No.

Mr. Chambers: I offer the photograph in evidence.

Mr. Ransom: I have no particular objection to it, except that it does not relate to any property that is claimed to be used or useful in the gas business. It was used in some prior years.

Mr. Chambers: I take it that that concession is made by counsel for the entire period, that it was not used or useful.

Mr. Ransom: Nothing of the sort. We are not concerned with any entire period.

Marked Defendants' Exhibit AA197.

Mr. Chambers: Do you remember that charge, that we would take trick photographs? I do; I have not forgotten what he said.

Q. Now, I show you another photograph. Did you take that (handing witness)?

A. Yes.

Q. And in which direction was it taken?

A. Looking north—northwest.

Q. Where is the place in question? 32444

A. 66th Street and First Avenue.

Q. Isn't that 111th Street and First Avenue?

A. Oh, yes, I got that mixed up. It is.

Q. That is 111th Street and First Avenue?

A. Yes.

Q. And does that correctly represent the situation there as you found it?

A. Yes.

Mr. Chambers: I offer the photograph in evidence.

Mr. Ransom: No objection.

Marked Defendants' Exhibit AA198.

Q. Was it taken from the public street? 32445

A. No, from the Company's meter house.

Q. Which you found on the property?

A. Yes.

Q. Or on some adjoining property, the meter house?

A. No, the public property.

Mr. Ransom: That was not taken from any property of this Company.

The Master: Well, I cannot get into an argument between you and this witness. He has said where he took it from.

Mr. Ransom: Well, I move to strike it out.

The Master: I cannot strike it out; he has stated it.

Mr. Ransom: It is conceded the witness is in error?

The Witness: I understood Mr. Mrich, your representative, to say it was the Company's property.

Q. And that is what you base your answer on?

A. Yes, sir.

Q. Now, I show you another photograph. Do you
32447 recall where that was taken, or what property it represents (handing witness)?

A. 111th Street and First Avenue.

Q. In which direction were you looking?

A. Looking to the southwest.

Q. Where was your camera placed , on the Company's property or in the street?

A. In the public park.

Q. And that truly represents the situation there as you found it?

A. Yes.

Mr. Chambers: I offer it in evidence.

Mr. Ransom: No objection.

32448 Marked Defendants' Exhibit AA199.

Q. I show you another photograph. You took that (handing witness)?

A. Yes.

Q. Where did you place your camera, on the National Coal & Coke Company's property?

A. I believe so. I could not exactly say.

Q. Well here, do you remember just where?

A. Well, back of this particular building here.

Q. Which is marked National Coal & Coke Company?

A. Yes.

Q. And what does that represent?

A. Well, it shows the yards there between 110th and 111th Streets, between Pleasant Avenue and First Avenue.

Q. And in which direction did you look?

A. Looking west.

Mr. Chambers: I offer the photograph in evidence.

Marked Defendants' Exhibit AA200.

Q. Now, I show you another photograph. Where was the location?

A. 111th and 110th Streets, between First and 32450
Pleasant Avenue.

Q. And you took it on the date you mentioned?

A. Yes, sir.

Q. On whose property, or where was your camera?

A. Up on the meter house.

Q. And which direction were you looking?

A. Looking southeast.

Mr. Chambers: I offer the photograph in evidence.

Marked Defendants' Exhibit AA201.

Q. I show you another photograph and ask you if you took that on the day you mention?

A. Yes. 32451

Q. And where is the property?

A. 110th Street and Pleasant Avenue.

Q. And where was your camera placed?

A. On, I don't know whether that is a public dock or not.

Q. It was on the dock?

A. Yes, on the dock.

Q. And in which direction were you looking?

A. Looking northwest.

Mr. Chambers: I offer the photograph in evidence.

Marked Defendant's Exhibit AA202.

Q. I show you another photograph and ask you if you recall where that was taken?

A. 110th Street and Pleasant Avenue.

Q. And you placed your camera on the dock, did you?

A. On the dock.

Q. And in which direction were you looking?

A. Looking north.

Mr. Chambers: I offer the photograph in evidence.

Marked Defendants' Exhibit AA203.

32453 Q. I show you another photograph and ask you if you took that on the day you mention?

A. Yes.

Q. And where is the property located?

A. West 132nd Street, between 11th and 12th Avenue.

Q. And in which direction did you point your camera?

A. Southeast.

Q. And where did you place your camera?

A. On the sidewalk in West 132nd Street between 11th and 12th Avenue.

Mr. Chambers: I offer the photograuh in evi-

32454 dence.

Marked Defendants' Exhibit AA204.

Q. I show you another photograph and ask you where the *locus in quo* of that is?

A. 12th Avenue and 132nd Street.

Q. And where did you place your camera when you took the photograph?

A. On the sidewalk.

Q. In the public street?

A. In the public street, yes.

Q. And in which direction were you looking?

A. East.

Mr. Chambers: I offer that photograph in evidence.

Marked Defendants' Exhibit AA205.

Q. I show you another photograph and ask you if you took that on the day you mention?

A. Yes.

Q. And where is the location of the property?

A. 65th Street between Amsterdam and West End Avenues.

Q. And where did you place your camera, in the public street?

A. Public street. 32456

Q. And in what direction did you point your camera, do you remember?

A. Why, northwest.

Mr. Chambers: I offer the photograph in evidence.

Marked Defendants' Exhibit AA206.

Q. I show you another photograph and ask you if you took that on the day in question?

A. Yes.

Q. And where did you place your camera?

A. In the public street.

Q. And in what direction were you looking?

A. Looking southwest. 32457

Q. And where is that property located?

A. 66th Street and West End Avenue.

Mr. Chambers: I offer that photograph in evidence.

Marked Defendants' Exhibit AA207.

Q. I show you another photograph and ask you where that is located?

A. That is between 66th and 65th Streets, Amsterdam and West End Avenues.

Q. And in which direction were you looking when you took it?

A. Northwest.

Q. And where did you place your camera?

A. On the company's property.

Mr. Chambers: I offer that photograph in evidence.

Marked Defendants' Exhibit AA208.

Q. Now, these photographs truly represent the situations as you found them?

A. Yes.

Q. And you used no trick photography in taking any of them?

A. No.

32459 Q. Nor did you alter or change the photographs?

A. No.

Q. In any way; or the plates?

A. No.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Defendants' Exhibit AA195 showing the Kingsbridge holder in the distance is taken looking down Harlem River Terrace, is it not?

A. Yes, sir.

Q. What you understand to be the property of the Company is the hillside to the left of the picture?

A. To the left.

Q. That is the wide road in the middle of the pic-

32460 ture is Harlem River Terrace?

A. Yes, sir.

Q. The photograph which is Defendants' Exhibit AA198 was taken from the big meter shop building?

A. Yes.

Q. That is the large building which appears in Defendants' Exhibit AA200?

A. Yes.

Q. But from the other corner of the building that appears in Exhibit AA200?

A. From the northwest corner.

Q. You had instructions in writing regarding this work from Mr. Maltbie?

A. Yes, sir.

Q. May I see them?

A. Yes, sir (handing paper).

Mr. Ransom: I offer the memorandum for photographer, in evidence.

Mr. Chambers: No objection.

Marked Complainant's Exhibit 457.

Q. How many pictures did you take in all?

A. Sixteen.

Q. You have so far made only one set from those 32462
plates?

A. That is all.

Mr. Ransom: I think one further set should be made and furnished to the complainant.

The Master: I do not think I have any power to compel copies to be furnished. I suppose this witness will make an extra copy if he is paid for it.

Mr. Chambers: If the Master recalls, we were admonished not make but one copy.

The Master: Yes.

Mr. Chambers: And we complied with that.

The Master: There was a lot of talk about it. 32463
I have forgotten what it was now.

Mr. Chambers: In substance we were not to make but one copy.

Mr. Ransom: Well, I hope you don't.

The Master: Yes, I remember there was some argument about it: I do not know what it was all about myself, the secrecy about it.

Mr. Ransom: Well, at the suggestion of Mr. Chambers, I suggest we copy Exhibit 457 in the record.

32464

The Master: Give it to the stenographer and he will copy it in.

Exhibit 457 is as follows:

"MEMORANDUM FOR PHOTOGRAPHER.

"1. E. 132nd Street and East River. Block on north side of E. 132nd and the east side of Locust Ave., Bronx. Get a photograph showing extent to which this property is occupied. If it is possible to take one from the top of the ferry house at the foot of E. 132nd St., this should give a good view.

"2. Block north of W. Fordham Rd. and east of Harlem River Terrace. Get one view showing the
32465 holder and pumping station; one view from the southwest showing the vacant land east of the holder, one view from the extreme northern end of the property taken from near the railroad so as to show the extent of land not occupied by the holder station and showing holder in the background.

"3. Inwood Holder Station. Get one or two views of plot between Kingsbridge Road and Sherman Ave. showing holder and buildings on this property.

"4. W. 132nd Holder Station. Get one view of holder on the north side of W. 132nd St. and the east side of 12th Avenue and one view of the pumping station, etc., on the south side of W. 132nd St. and
32466 about 300 feet east of 12th Ave., this photograph to show the unoccupied land west of the buildings.

"5. 111th St. Holder Station. Get a view showing the property on the north side of E. 111th St. and the west side of First Avenue; get a view showing the two holders, pumping station, etc., on the south side of E. 111th St. and the east side of First Ave. Get one view showing the front of the structures on the south side of E. 111th St. and about 120 feet east of First Ave. These structures being just east of the tall meter shop on the southeast corner of E. 111th St. and First Ave. Get one or two views showing the

easterly end of block on south side of E. 111th St. and east side of Pleasant Ave. showing the extent to which this plot is used and the buildings and structures thereon. Get one view showing the dock on the east side of Pleasant Ave. between E. 110th and E. 111th Sts.

"6. West 65th St. property. Get one or two views showing the extent to which the block between W. 65th and W. 66th Sts., West End Ave. and North River Railroad is occupied by buildings. This view can probably be obtained from the holder on the east side of West End Ave. Get one view showing 32468
holders, pumping station, etc., on the north side of W. 65th and the east side of West End Ave. Get one or two views showing unoccupied property east of these holders."

(Witness excused.)

WILSON W. THOMPSON, recalled, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Thompson, have you now found four original contracts between the Brooklyn Borough Gas 32469
Company and some oil company?

Mr. Ransom: I object to the question in form.

The Master: Overruled.

Mr. Ransom: Exception. How can he testify whether they are originals?

The Master: I don't know.

Q. Well, four contracts?

A. Yes.

Q. And they were in the possession of your Company?

A. Yes.

Q. Will you produce them?

A. They are here.

Q. Will you let me see them?

A. Yes, but I want to place this statement upon the record, that the Brooklyn Borough Gas Company has been advised that no party to this suit has the legal right to require it to produce any of its private papers to be used or offered in evidence in this suit. The pri-
32471 vate papers of a third party cannot be produced by any party to this suit, whether the third party happens to be a gas corporation or a private individual. But as these particular papers are inconsequential, we have no objection as a matter of favor to their being used by any party to this suit, but we want to register formal protest and objection to subjecting our private papers to inquisition and inquiry in a suit of this kind, and with that statement I am very glad to produce these papers.

Q. Well, of course, there is no need taking issue. You are a public service corporation and I think the Public Service Commission could require the produc-
32472 tion of oil contracts.

A. The Public Service Commission could, but that is entirely a different question.

Q. Well, if the Public Service Commission could, surely the Court could.

A. No, I beg to differ with that proposition.

Q. Well, I may be all wrong on that.

The Master: There is no use arguing it. If they are here, let us have them.

Q. The first contract is dated July 23, 1906, between the Standard Oil Company of New York and

the Brooklyn Borough Gas Company. That is an original contract, is it?

A. I don't know.

Q. Well, whose signature is that, J. J. Humphrey?

A. I do not know. There was a J. J. Humphrey that I understand was a former general manager of the Company.

The Master: From whom did these papers come?

The Witness: From Miss Dillon, the acting general manager.

The Master: In pursuance of what? 32474

The Witness: A subpoena that was served upon her.

The Master: To produce what?

The Witness: "All contracts, letters and writings relating to the furnishing of gas oil from 1904 to 1913 between yourself and companies supplying same."

The Master: This lady you have mentioned is the lady whom you said before was the general manager, practically?

The Witness: Acting general manager.

The Master: And the only officer around?

The Witness: Yes. 32475

The Master: And she produced it from the files?

The Witness: She sent them to my residence one Sunday.

The Master: You haven't any doubt they are original contracts, have you?

The Witness: Not in the slightest.

The Master: I will take them as original contracts.

Mr. Chambers: I offer in evidence contract dated July 23, 1906, between the Brooklyn Bor-

ough Gas Company of Coney Island and the Standard Oil Company of New York.

Mr. Ransom: Objected to on the grounds previously indicated.

The Master: It will be received, under the ruling heretofore made.

Marked Defendants' Exhibit AA209.

The Master: Identify all these contracts and they will be marked in evidence over the same objection. Mr. Thompson, can you have copies of those made?

32477 Mr. Chambers: We will.

The Master: He will leave them with Mr. Chambers, so you can have copies made, and send them back to Mr. Thompson.

The Witness: Yes.

Q. I show you another paper dated July 29, 1907, that was produced in the same way, and whatever you said about the other, you say for that?

A. Just the same.

Mr. Chambers: I offer this contract dated July 29, 1907, between the Standard Oil Company of New York and the Brooklyn Borough Gas Company of Coney Island, containing the same signatures.

32478 Mr. Ransom: Same objection.

The Master: The same ruling.

Marked Defendants' Exhibit AA210.

Q. I show you another paper dated July 10, 1908, purporting to be a contract between the Standard Oil Company of New York and Brooklyn Borough Gas Company, and whatever you said about the other two you would say the same for this?

A. Exactly.

Mr. Chambers: I offer it in evidence, being contract dated July 10, 1908, between the Brook-

lyn Borough Gas Company of Coney Island and the Standard Oil Company of New York.

Marked Defendants' Exhibit AA211.

Q. I show you another paper dated January 19, 1910, between the Standard Oil Company and the Brooklyn Borough Gas Company. Whatever you said for the other three papers you would say for that?

A. Exactly.

Mr. Chambers: I offer it in evidence, being contract dated January 19, 1910, between the Standard Oil Company of New York and the Brooklyn Borough Gas Company of Coney 32480
Island.

Marked Defendants' Exhibit 212.

Mr. Chambers: Counsel is now doing what, looking at the subpoena?

Mr. Ransom: I surely am.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Thompson, I notice that Mr. Chambers' subpoena covers only contracts from 1904 to 1913. Have you produced any of the contracts since 1913?

A. No.

Q. Will you produce them at some future time in this case?

A. If I have them. 32481

Mr. Chambers: I object unless he subpoenaes them.

Q. There are other contracts for this later period, are there not?

The Master: Mr. Thompson indicates that he doesn't know, he says if he has any he will bring them over.

Mr. Ransom: Well, I ask that the witness come back and bring his other contracts for cross-examination.

Mr. Chambers: No. He has produced here all I called for now.

The Master: Yes, I think you will have to either arrange with Mr. Thompson to come over voluntarily or subpoena him.

Mr. Chambers: I do not think I am obliged to bring Mr. Thompson here again.

Mr. Ransom: Well, I have a right to show the effort of these defendants to try this case solely in the dim and distant past. Nothing since 1913 interests them.

The Master: Well, now, Mr. Thompson, you are excused. You can do as you please about it,
32483 arrange with Mr. Ransom to bring in some further documents, or wait for a subpoena. I will permit you to recall Mr. Thompson for further cross if you bring him back. I won't place the burden on the defendants to bring him back.

GEORGE C. GOLDTHWAITE recalled:

DIRECT-EXAMINATION BY MR CHAMBERS:

Q. You recall, do you, what took place the other day in regard to Table 151, Defendants' Exhibit
32484 AA133?

A. Yes.

Q. As to loss of volume?

A. Loss of volume of the Mutual Company.

Q. In regard to that letter dated July 28th, 1910, from the New York Mutual to the Public Service Commission?

A. That was the letter—I don't remember the date of it. I suppose that was it.

Q. It related to some unaccounted for gas?

A. Yes.

Q. Have you corrected your table using the information contained in that letter?

A. I have.

Q. Have you the table there corrected?

A. I have the table here corrected.

Q. You can read the figures right off. It affects only which column?

A. The column headed 1918.

Q. Which figures would be affected by it, assuming that the information contained in the letter was correct?

A. Taking that one, the second figure from the top 32486
of the column, it is 25,113,615; it should be 25,127,204. The figure below it—

Q. While you are doing that, will you take Defendants' Exhibit AA132 and make those corrections on the margin?

The Master: I don't think this is the place to correct exhibits. You ought to have corrected exhibits.

Mr. Chambers: We don't know whether this is correct or not. We are showing it both ways.

The Master: Prepare another exhibit showing it both ways.

Mr. Ransom: I object to taking up time that 32487
way.

Mr. Chambers: I don't see any harm in putting it in the record.

The Master: It takes time.

Mr. Chambers: How can I correct it except under oath?

The Master: Have him prepare another exhibit showing the changes. You can take oral testimony as to what changes were made, but I won't allow him to change any exhibits.

Mr. Chambers: All right.

The Master: Let him finish Table 151, and state orally in what respect the figures are changed.

The Witness: I spoke of the change in the second figure from the top of the column. The figure below it, formerly 33,127,384 should be 33,140,973.

The third figures from the top of the column, formerly 3,254,336, should be 3,267,927.

The figure below that, formerly 21,323,000, should be 21,336,679.

32489 The figure below that, formerly 29,303,193, should be 29,316,782.

Those are all the changes it makes.

Q. That is on the assumption only that that information contained in that letter was correct?

A. Yes.

Q. You don't know that it is?

A. I don't know that it is.

Q. Because it was not in the sworn report?

Mr. Ransom: I object to the question. He took it into account in part before.

The Master: I will allow it.

Mr. Ransom: You can't play fast and loose
32490 with the same paper. Either he should ignore it or take it.

Mr. Chambers: I will later offer a new table with that information printed on it.

Q. You were cross-examined the other day in regard to Table 159, which is Exhibit AA123, and Table 160, which is Defendants' Exhibit AA124, in regard to the relief holders?

A. Yes.

Q. Are you able to give the number of relief holders?

A. I am able to give from my original notes the relief holders, the number and capacity as they were reported in these reports to the Public Service Commission.

Q. Will you do so for each year?

A. The first ones I find—

Mr. Ransom: Just a moment. May they put a witness back on the stand to contradict the testimony which he previously gave?

The Master: Oh, I don't know, I have been wondering—

Mr. Ransom: He says he had this in his orig- 32492
inal notes.

The Master: This re-direct examination long after the witness has been excused, I don't think it is proper.

Mr. Ransom: He testified in the first instance that he didn't make notes of these things, and now he says it is in his original notes.

The Master: You bring back a witness sometime after his direct is finished—

Mr. Chambers: If the other side do it time and again?

The Master: I say I am taking it.

Mr. Ransom: If you take up time to put in 32493
these tables again and again, we will never get through.

A. The Astoria Light, Heat & Power Company reported one relief holder of 1,000,000 cubic feet capacity in 1912 and all following years.

The Consolidated Gas Company reported two three hundred and fifty thousand cubic feet relief holders at 21st Street for 1914 and following years.

The Consolidated also reported one one hundred thousand cubic feet capacity relief holder at 99th Street station in 1914 and following years.

I did not find any other holders reported as relief holders by the Consolidated or other companies.

Q. Now, when you said the other day that you made no note of relief holders, you meant you made no note of relief holders on the table?

A. On the table that was offered in evidence I made no note of the relief holders.

Q. But you did have this information in your working papers?

A. I had this information in my working papers.

Q. Now, on page 9437 of the minutes—have you
32495 looked at that—the word "drawing" should be "map" should it not?

A. No, the word "map" should be "drawing," page 9437.

The Master: I am not going to take corrections of the testimony now.

Mr. Chambers: I know you are not, but he is right here.

The Master: I am not going to take it now. Don't let us waste time on that. Let us have something else.

Mr. Chambers: That is all.

CROSS-EXAMINATION BY MR. RANSOM:

32496 Q. Have you made all the corrections that you want to make in your exhibits?

A. I have made no other corrections in the exhibits.

Q. This same error that you made in Exhibit 133 runs through and affects Exhibits 134 and 135, does it not?

Mr. Chambers: I object to that on the ground that it is not an error.

Mr. Ransom: It is obviously an error.

The Master: A change then.

Mr. Ransom: It is an error one way or the other.

The Master: Eliminate the word "error." The change affects them?

Q. This same revision that you now propose to make in Exhibit AA133 runs through and affects Exhibits AA134 and AA135, does it not?

A. It would, but it does not. The change is too small to affect the other tables.

Q. You don't want to make any change in Exhibit AA134 or Exhibit AA135?

A. I have made no change due to this change re- 32498
ferred to in Exhibit AA133.

Q. This change you have made in Exhibit AA123, and Exhibit AA124, that likewise affects Exhibits AA136 and AA137, does it not, Tables 161 and 162?

A. Will you repeat that?

Q. I say, the change you propose to make in Exhibits AA123 and AA124 likewise affects your Tables 161 and 162, in which you undertake to compare what you call Manufacturing Capacity with what you call Holder Capacity, and Table 162, in which you compare what you undertake to call Holder Capacity with what you undertake to call Average Daily sales to the Public?

32499

A. I made no change in Exhibits 123 and 124. I did not intend to make any change in those.

Mr. Ransom: Well, we will have to take up his new exhibits when they come in and see how many errors there are in them.

Mr. Chambers: I object to that false and misleading statement. There are no errors, he has not found any.

Mr. Ransom: I suspend the cross-examination until we see how many there are in the new ones.

Mr. Chambers. No, I suggest that the cross-examination should be finished.

The Master: Step down, Mr. Goldthwaite.

Mr. Ransom: Is the re-direct of Mr. Goldthwaite finished?

Mr. Chambers: Yes, it is.

CLIFFORD H. PYLE, recalled.

DIRECT-EXAMINATION BY MR. CHAMBERS:

32501 Q. Take Table 154, Defendants' Exhibit AA139, take that table, Mr. Pyle—do you remember what was said the other day about the Newtown matter?

A. Yes, sir. That does not affect that table.

Q. Not at all?

A. No, sir.

Q. Have you made any change in that table?

Mr. Ransom: I object to the question. It is immaterial whether he has made any change or not. It has already been demonstrated that what he calls Plant Capacity is not plant capacity at all.

The Master: I will let him state.

32502 A. Under the heading "Gas Manufactured for 1918" the figure which formerly was 33,127,384 has been changed to—

The Master: No, it has not been changed at all.

The Witness: Should be.

Mr. Ransom: Should have been.

The Master: Should be changed.

The Witness: Should be 33,140,973.

The Master: You haven't made any changes in any original exhibits, have you?

Mr. Ransom: This is all simply confirming what we brought out. They never would have found these errors at all if we had not brought them out.

Q. What is this change for?

A. This figure was taken from Table 151, Defendants' Exhibit AA133, and since that was changed, this being based upon that figure, is also changed. However the relation, the column headed "Relation" is not changed by the 1918 gas manufactured.

Q. Why?

A. Because the ratio is the same, the change being so small. 32504

Q. Now, Table 155, Exhibit AA140—by reason of the change in the Table 151 should there be any change in this table?

A. The figure for 1918 under the heading "Gas Manufactured," which was 33,127,384, should be 33,140,973.

Q. Does that make any change in your last column?

A. No change in the last column.

Q. Why?

A. Because the difference is too small. The foot note F is changed however for 41,330 M cubic feet to 91,909 M cubic feet. 32505

Q. In the Table 156, Defendants' Exhibit AA125, is there any change in that table by reason of the change in Table 151?

A. For the year 1918, under the heading "Made During Year" the figure which reads 33,127,384, should be 33,140,973.

That changes the 1918 "Delivered to Mains" from 33,013,208 to 33,026,797.

That also changes the "Unaccounted For," 1918, from 2,327,781 to 2,341,370.

The 1918 unaccounted for in per cent of gas delivered to mains, which now reads 7.05 per cent should read 7.09 per cent, by reason of the original change in "Gas Made During Year."

Q. Any other changes in the table?

A. In the year 1908 the heading "Bought from Newtown Gas Company" should be inserted, and for 1908 the amount would be 2,942 M cubic feet, making the total for 1908 of gas delivered to mains, 24,258,166, in place of 24,258,224.

This addition also changes the unaccounted for for 1908 from 1,150,976, to 1,153,918.

32507

The per cent of unaccounted for in per cent of Gas Delivered to Mains for 1908 is changed from 4.75 per cent to 4.76 per cent, by reason of this addition, swinging the figure "5" over to a "6."

For 1909, "Bought from Newtown Gas Company" should be inserted as 2,439 M cubic feet, changing the "Delivered to Mains" for 1909 from 26,115,290 to 26,117,729, and changing the unaccounted for for 1909 from 1,434,883 to 1,437,322.

This changes the unaccounted for in per cent of gas delivered to mains from 5.49 per cent to 5.50 per cent for 1909.

32508

Mr. Chambers: That is all.

The Master: Any questions, Judge Ransom?

Mr. Ransom: Why, no, except we have been trying for some days to get a chance to go over with Mr. Pyle his working papers, as I requested when he was on the stand one of the earlier times that he was examined on direct with respect to Exhibit AA125. I take it he has been pretty busy, but we have not been able to get that opportunity, and I would like to get it. When I do get it I want to cross-examine him on Defendants' Exhibit AA125, because I

do not know how many more errors there will be in it that he will have to correct.

Mr. Chambers: There have not been any yet.

The Master: Any more questions of this witness?

Mr. Ransom: No.

FRANCIS T. MYLOTT, called as a witness in behalf of the defendants, being duly sworn, testified as follows: 32510

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Where are you employed now, Mr. Mylott?

A. I am employed by Marvin Scudder & Co., 177 Broadway.

Q. What is Mr. Scudder's business?

A. Public accounting.

Q. How long have you been employed with him, off and on?

A. I have been employed off and on with Mr. Scudder about four years.

Q. And he is a certified public accountant?

A. He is. 32511

Q. His business is doing accounting work?

A. Yes, sir.

Q. What education did you have, Mr. Mylott?

A. Why, I graduated from the Johnstown High School and I graduated from the Eastman Business College at Poughkeepsie, New York.

Q. When did you graduate from the Eastman Business College?

A. In 1915.

Q. Since you have been working for Mr. Scudder what work have you been engaged in?

A. I have been engaged in public accounting, and lately I have been engaged in investigation of gas companies.

Q. What accounting work have you been on with Mr. Scudder?

A. Why, I have been on practically all kinds of public accounting.

Mr. Ransom: I object unless the witness tells what he did.

The Master: If you force me to, I can tell you some of the things he did.

32513 Mr. Ransom: I do not want anybody to incriminate himself.

Q. Have you ever worked on any matters that the Master was interested in?

A. Yes, sir.

Q. What matter was that?

A. A private concern, a lighterage company here in the City.

Q. Can you just tell a few of the concerns which you have done accounting work for?

A. I have done accounting work in stock houses. I have done accounting in manufacturing concerns, I have done accounting in lighterage concerns, I have
32514 done accounting—a small portion of accounting in State work. It has been mostly manufacturing.

Q. You worked on the Albany gas case, did you not?

A. I did.

Q. The Municipal Gas Company of Albany?

A. I did.

Q. You testified in that case?

A. I did.

Q. And you prepared certain tables there taken from the company's books, or rather from the reports of the Public Service Commission?

A. I did.

Q. You were working on that Albany case for quite a long time, were you not?

A. Yes, sir.

Q. From March until July, about?

A. Yes, sir.

Q. Continuously?

A. Yes, sir.

Q. Did you go right from the Albany gas case to this Consolidated work?

A. I did.

Q. When did you begin about, on the Consolidated Gas Company, your branch of the case, for the de- 32516
fendant Newton?

A. I began around the end of July or the latter part of July.

Q. And you have been working almost continuously since, up to November?

A. I have.

Q. About when did you finish with your work on the Consolidated Gas Company?

A. Why, I finished the latter part of November.

Q. And, that is, working in the company's office, were you, then?

A. Yes, sir.

Q. And since then or at that time—was it since 32517
then that you prepared your tables?

A. Why, I prepared the tables at that time.

Q. Since you were finnished in November with that work where have you been?

A. Since November I have been in Utica on the gas investigation, and completed that, and since the 4th of January I have been at Pavilion, New York, on another gas investigation, up to Saturday night.

Q. You were working there for Judge Southerland's side of the case?

A. Yes, sir.

Q. And you are still working on that, are you?

A. Yes, sir.

Q. You came down here to testify in this case?

A. Yes, sir.

Q. What were you asked to prepare by Mr.—you worked under the direction of Mr. Maltbie, did you not?

A. Yes, sir.

Q. In the preparation of these tables?

A. Yes, sir.

Q. What work were you directed to do or prepare

32519 generally?

A. On mains and services—statistics on mains and services.

Q. For what years?

A. From the year of 1906 to 1918.

Q. And where did you get your information from, generally?

A. Generally my information came from the books and records of the company, the Consolidated Gas Company.

Q. And you worked up there in their offices?

A. Yes, sir.

Q. The first table you prepared was Table No.

32520 200, was it not?

A. It was.

Q. What does that purport to show?

A. It purports to show the book length of mains, 1906 to 1918, of the Consolidated Gas Company.

Q. Where did you get your information from for that particular table?

A. The data for that particular table was taken from the report of operations on mains, services and public lamps, the books covering a period from August, 1895, to the present date; from the reports of mains and services of the 111th Street Department,

the reports of mains and services of the 66th Street Department, the reports of mains and services of the Hester Street Department, and from the monthly statements of mains, books Nos. 4 and 5.

Q. Whom did you get these from, these reports? Those are reports to the Consolidated Gas Company?

A. Yes, sir.

Q. Whom did you get them from?

A. Mr. Davidson.

Q. He handed them to you or furnished them to you?

A. He furnished them to me? 32522

Q. That includes all you used in the preparation of this Table 200?

The Master: Is that right?

A. Yes, sir.

Q. Is that table correct?

A. It is.

Q. You prepared, did you, Table No. 201?

A. I did.

Q. What does that purport to show?

A. That purports to show the book length of mains laid, 1906 to 1918, of the Consolidated Gas Company.

Q. Just to go back here to the other table a minute, 32523
Mr. Mylott, the first column you put there, "'Balance January 1st, 1906," what did you mean by that?

A. That is the balance according to the sizes of the mains, as shown by the books of the Consolidated Gas Company.

Q. And the column "Laid"?

A. The column "Laid" shows the length of the mains laid by the Consolidated Gas Company between 1906 and 1918—the book lengths.

Q. And "Taken Up"?

32524

A. "Taken Up" shows the length of the mains—the book lengths of the mains taken up by the Consolidated Gas Company between 1906 and 1918.

Q. "Abandoned"?

A. "Abandoned" shows the book lengths of the mains abandoned by the Consolidated Gas Company between 1906 and 1918.

The Master: I notice that both you and Mr. Ransom have been working from 1906 to 1918. What becomes of the period between 1884 and 1906?

32525 Mr. Chambers: We are going to cover that.

Mr. Chambers: It seems to me there has got to be a complete record.

Mr. Chambers: I have got it from start to finish, just what you said the other day about that. I tie it right up tighter. The company ought to be highly pleased with this record here.

The Master: I do not care about the company being pleased, but I will be if I get this.

Mr. Chambers: Yes, you are going to have it complete; it is raked and scraped.

Mr. Ransom: And it will take two weeks to correct it when it is done.

32526 Q. "Sold"?

A. "Sold" shows the book length of mains laid by the Consolidated Gas Company from 1906 to 1918.

Q. The column "Deductions"?

A. "Deductions" is the total of the three columns "Taken Up," "Abandoned" and "Sold."

Q. The last column "Balance December 31, 1918"?

A. The last column shows the balance as shown on the books of the Consolidated Gas Company at December 31st, 1918.

By the Master:

Q. That checks with the book, does it?

A. That checks with the book.

Q. In other words, you did not make any deductions or changes yourself?

A. No, sir.

Q. You are just showing book records here?

A. Book records.

The Master: You want to take the next table?

By Mr. Chambers:

Q. Next table, No. 201. I think you stated a moment ago where you had taken the information 32528
—records handed to you by Mr. Davidson?

A. Yes, sir.

Q. And the records of the company only?

A. Yes, sir.

Q. And you have made no changes?

A. I have made no changes.

Q. And you took those just as they were?

A. Just as they were.

Q. What records for this Table 201?

A. I used the same records for this Table 201 as were used for Table 200.

Q. On the bottom here you have some note; will you explain that? 32529

A. That note means that all mains—this table shows the book length of mains laid between 1906 and 1918. The note explains that—all mains laid by the Consolidated Gas Company for itself and other companies, including relaid mains.

Q. This gives the size of the pipe in the first column?

A. Yes, sir.

Q. And the different years when laid?

A. Yes, sir.

Q. And the amount in feet?

A. Yes, sir.

Q. And the total at the end is the total of the—it is the total of what?

A. It is the total between 1906—the total pipe laid between 1906 and 1918.

The Master: Of the various sizes?

The Witness: Of the various sizes.

Q. Is that table correct?

A. It is.

Q. Table No. 202. You prepared that?

A. I did.

Q. What records did you use?

32531 A. For preparing Table No. 202 I used the same records that were used for Table 200.

Q. And this shows what, generally?

A. This shows the book length of mains taken up between 1906 and 1918, by the Consolidated Gas Company.

Q. Upon the table you have placed the size of the mains so taken up and the amount in feet each year?

A. Yes, sir.

Q. And you have totaled them in the last column?

A. Yes, sir.

By the Master:

Q. I see you have got a footnote "A" here. That

32532 only affects certain items, does it not?

A. Yes, sir.

Q. Certain particular items?

A. Yes, sir.

Q. For instance, in 1912 it affects a 48-inch main?

A. Yes, sir.

The Master: And in 1915 a 48-inch main. I do not see any more.

Mr. Ransom: May I call attention to the fact that this exhibit has been furnished to the Court and parts of it are being put into the record, but counsel has not yet furnished it to the complainant.

The Master: No, no parts of it are in the record yet. Next question.

By Mr. Chambers:

Q. Table No. 203, Mr. Mylott. What did you use in the preparation of that table?

A. In the preparation of Table No. 203 I used the same records as were used for Table 200.

The Master: Apparently Tables 203, 202 and 201 are simply subdivisions, or another method of analyzing Table 200?

The Witness: Yes.

Q. I did not ask you, is Table No. 202 correct? 32534

A. It is.

Q. Now, this Table No. 203 shows the size of the mains, does it?

A. Yes, sir.

Q. And the amount in feet abandoned each year?

A. Yes, sir.

Q. And then the total at the end?

A. Yes, sir.

Q. Is that table correct?

A. It is.

Q. You have made no changes in the company's records?

A. I have not. 32535

Q. And you took them just exactly as they were?

A. I did.

Q. Table No. 204 will you explain that and what it purports to show first?

A. Table No. 204 purports to show the book length of mains sold between 1906 and 1918, classified in the year in which the sale to other companies took place.

Q. And you have stated in the column 1 the size of the main and the amount in feet each year of the lengths of mains sold?

A. Yes, sir.

Q. And you have made no change in the company's records?

A. No, sir.

Q. But took them exactly as they were?

A. Yes, sir.

Q. And in the last column you have totaled up the number of feet?

A. Yes, sir.

Q. Is that table correct?

A. It is.

Q. And you used the same data as you used for
32537 Table No. 200?

A. I did.

Q. Table No. 205. What does that purport to show, generally?

A. That purports to show the book length of mains laid for other companies between 1906 and 1918.

Q. By the Consolidated?

A. By the Consolidated Gas Company.

Q. And where did you get your data for that?

A. The data for that table was obtained from the same sources as the Table 200.

By the Master:

Q. What is this note that you have got here?

32538 A. The note is mains were laid during the indicated year, which were subsequently billed to other companies. These figures do not agree with the preceding ones because the mains were not sold to the companies in the same years in which they were laid for the other companies.

Q. That is the explanatory note?

A. Yes, sir, of the table.

By Mr. Chambers:

Q. Is that table correct?

A. Yes, sir.

Q. And upon it you have shown the size of the mains and the amount in feet each year?

A. Yes, sir.

Q. And then totaled the number of feet at the end of the table under the column "Total"?

A. Yes, sir.

Q. Is that table correct?

A. It is.

Q. The next Table No. 206, you have prepared that, too?

A. I did.

Q. What data did you use for that?

A. The data used in making up Table No. 206 are Table 201 and Table 205. 32540

Q. And you have made no change in the company's records?

A. No, sir.

Q. But took them exactly as they were?

A. Yes, sir.

Q. What does this table purport to show generally?

A. This table shows the length of mains laid for the Consolidated Gas Company only, between 1906 and 1918, mains laid less mains laid for other companies.

Q. And upon the table you have set forth the size of the main and the number of feet laid each year? 32541

A. Yes, sir.

Q. And then totaled the number of feet at the end of the table?

A. Yes, sir.

Q. What is your little note here? You have made a note.

A. Through an error 192 feet of 6-inch main was listed as sold in 1914. This length has been deducted from the mains laid in 1914.

Q. Whose error was that?

A. That is the company's error.

Q. Is that table correct?

A. It is.

Q. Table No. 207. Did you prepare that?

A. I did.

Q. What does that purport to show, generally, Mr. Mylott?

A. That shows book length of mains classified as disused between 1906 and 1918 of the Consolidated Gas Company.

The Master: According to their books?

The Witness: According to their books.

32543 Q. What data did you use?

A. I used the same data in preparing that—no, in preparing that table we used the report of operations on mains, services and public lamps, the books covering a period from August, 1895, to the present date, and the monthly statement of mains, Books 4 and 5.

Q. All furnished to you by Mr. Davidson of the Consolidated Gas Company?

A. Yes, sir.

Q. Did you make any change whatsoever in the records of the company?

A. I did not.

32544 Q. You took them exactly as they were?

A. I did.

Q. And is the table correct?

A. It is.

The Master: You have got a note on this table, too. Will you explain that? What is that explanatory note?

The Witness: The note includes all mains classified as disused during each of these years, although some may have been abandoned or taken up at a later date. When so abandoned or taken up they appear in the table for mains

abandoned or taken up and in the table for disused mains abandoned.

Q. In the first column you put the size of the mains?

A. Yes, sir.

Q. And then the amount in feet for each year, and total it up at the end?

A. Yes, sir.

Q. Table No. 208. Did you prepare that?

A. I did.

Q. And what data did you use?

A. I used the same data for Table 208 as was 32546
used for Table 200.

Q. And what does that purport to show, Table 208?

A. Table 208 shows the book length of disused mains abandoned, 1906 to 1918.

Q. And you made no changes in the company's records?

A. No, sir.

Q. And is it correct?

A. It is.

Q. It shows the size of the mains and the amount of feet each year?

A. Yes, sir. 32547

Q. As disused mains abandoned?

A. Yes, sir.

Q. What is your little note at the bottom?

A. The records do not indicate that any disused mains were ever connected up and put in use again.

The Master: That is, you could not find any?

The Witness: No.

Q. You do not know whether that is true or not, but you could not find any from the data you examined?

A. That is right.

Q. Take Table No. 210, will you, first? You prepared Table No. 210, did you?

A. Yes, sir.

Q. And what did you use in the preparation of that table?

A. In the preparation of Table No. 210 we used Tables 207 and 208.

Q. And is this table correct?

A. It is.

Q. What does it purport to show?

A. The table shows the book length of mains disused at the end of each year, 1905 to 1918.

32549

Q. Take the first column, from 1905 down, you obtained that from Table No. 200—the same sources you obtained Table No. 200, or from 200?

A. The same column was obtained from the same sources as 200.

Q. You said this table was correct?

A. It is.

Q. And upon it you set forth the size and the number of mains disused at the end of each year, in feet?

A. Yes, sir.

Q. And total it at the end?

A. Yes, sir.

32550

Q. You have made no change in any way from the company's record?

A. No, sir.

Q. And when you said correct to all of these, you meant it is a correct tabulation or compilation of the company's data?

A. It is.

Q. Now, whether that underlying data is correct or not, you do not know?

A. No.

Q. You know nothing about it?

A. No.

Q. Table No. 209. Did you make up that table?

A. I did.

Q. What does that purport to show, generally?

A. That shows the length of mains between 1906 and 1918, of the Consolidated Gas Company, exclusive of mains laid for other companies and disused mains.

Q. And this balance January 1, 1906, where did you get that from?

A. That balance January 1, 1906, is taken from the balance shown on Table 200, under the first column, "Balance January 1, 1906." From that balance 32552
is deducted the mains disused as of January 1, 1906, under the first column of Table 210, and I have also deducted the mains laid in prior years to 1906, for others, and sold after 1906, which are shown in notes at the bottom of this table, which gives me the balance in the first column.

Q. You have given the size of the mains there in the very first column, under "Size"?

A. Yes, sir.

Q. In inches?

A. Yes, sir.

Q. And then the column "Laid," what does that mean?

32553

A. The column "Laid" is the length of mains laid for the Consolidated Gas Company only, less or exclusive of mains laid for other companies. The total of that column comes from Table 206.

Q. The "Taken Up or Abandoned" column, will you explain that?

A. The "Taken Up or Abandoned" column total, the balance of that column is taken from Tables 202 and 203.

Q. And "Disused"?

A. The "Disused" is the increase from January 1, 1906, to December 31, 1918, of Table 210.

Q. And the "Total Deductions" of that column?

A. The "Total Deductions" is the addition of the columns "Taken Up and Abandoned" and "Disused."

Q. And the "Balance December 31, 1918"?

A. The balance of December 31st is the balance of January 1, 1906, plus the "Laid," less the "Total Deductions," gives you the balance of December 31, 1918.

Q. And it is all given here as feet, except the first column which is in inches?

A. Yes, sir.

32555 Q. Is that table correct?

A. It is.

Q. Now, whether the underlying data is correct, that was furnished you by the company and you are unable to say?

A. I am unable to say.

Q. You made no changes in the company's data?

A. No, sir.

Q. And it was all furnished to you by the company?

A. Yes, sir.

Q. Through Mr. Davidson?

A. Yes, sir.

32556 Q. Table 211, did you prepare that?

A. I did.

Q. What did you use in the preparation of that table?

A. In the preparation of that table I used Tables 202, 203, 206, 209 and 210.

Q. And what does that table purport to show generally?

A. This table shows the length of mains in use at the end of each year from 1905 to 1918, exclusive of mains laid by other companies and disused mains.

Q. Is the table correct?

A. It is.

Q. And you made no change in the company's records?

A. No, I did not.

Q. And whether the underlying data is correct or not you don't know?

A. No.

Q. But you took it as you found it?

A. I took it as I found it.

Mr. Chambers: Now, I offer in evidence Tables 200 to 211, inclusive, and give the other side two copies.

Mr. Ransom: Well, where are they? 32558

Mr. Chambers: Perhaps I had better offer them one by one.

The Master: Just a second. You have offered 200 to 211. I want to hear whatever objections Judge Ransom has.

Mr. Ransom: I object to the offer as made on the ground that these tables are incompetent and immaterial, they are based on a number of —apparently based, from such examination as I have been able to make of them in a few minutes, upon a number of false assumptions with respect to the so-called disused or disconnected mains, so that the result which is reached is en- 32559
tirely unreliable and on a thoroughly unsound basis.

The Master: We will have to get that on cross. Objection overruled.

Mr. Ransom: Of course, I think "E and O E" ought to appear on all these exhibits, the same as on the previous ones. I take an exception.

Table No. 200 received in evidence and marked Defendants' Exhibit AA-213.

32560

Table No. 201 received in evidence and marked Defendants' Exhibit AA-214.

Table No. 202 received in evidence and marked Defendants' Exhibit AA-215.

Table No. 203 received in evidence and marked Defendants' Exhibit AA-216.

Table No. 204 received in evidence and marked Defendants' Exhibit AA-217.

Table No. 205 received in evidence and marked Defendants' Exhibit AA-218.

Table No. 206 received in evidence and marked Defendants' Exhibit AA-219.

32561 Table No. 207 received in evidence and marked Defendants' Exhibit AA-220.

Table No. 208 received in evidence and marked Defendants' Exhibit AA-221.

Table No. 210 received in evidence and marked Defendants' Exhibit AA-222.

Table No. 209 received in evidence and marked Defendants' Exhibit AA-223.

Table No. 211 received in evidence and marked Defendants' Exhibit AA-224.

The Master: I suppose you want a chance to look these over before you cross-examine?

Mr. Ransom: I would like, if that is all they

32562 are going to put in by this witness.

The Master: I will have to give you a chance to look at them.

Mr. Ransom: Is that all for this witness?

Mr. Chambers: Just sit down, will you. No, it is not all.

Mr. Ransom: I won't sit down, I usually stand when I address the Court. It will probably take some time to find the E and O E on these.

Q. Did you prepare some additional tables?

A. I did.

Q. Take Table 220, did you prepare that?

A. I did.

Q. What does that purport to show?

A. Table 220 shows "Street mains 1906 to 1918, the Consolidated Gas Company fixed capital December 31, 1908."

Q. Where did you get your information from for that?

A. The information for this table was obtained from the operating ledgers 1906 to 1917, inclusive. 32564

Q. Of the Consolidated Gas Company?

A. Of the Consolidated Gas Company. And the operating ledger A for 1918 of the Consolidated Gas Company.

Q. In the first column what have you placed?

A. In the first column I have placed the year.

Q. And in the second column?

A. In the second column we have placed the balance as of January 1st.

The Master: As appearing from the books?

The Witness: As appearing from the books.

Q. You did not change the books in any way?

A. I did not. 32565

Q. And whether the amounts stated in the books as to all these tables I am going to ask you about now was correct, you don't know?

A. I do not.

Q. You took the figures exactly as you found them?

A. I did.

Q. Now, the debits, what does that mean?

A. The debits means the actual debits as shown on the books for each **year.**

Q. And the credits?

A. The credits are the credits that are shown on the books for each year.

Q. And the balance in the last column?

A. The balance in the last column was the balance as of January 1st plus the debits less the credits, and gives the balance for January 1st of each year.

Q. Is that table correct?

A. It is.

Q. Did you prepare Table 221?

A. I did.

32567 Q. And what does that purport to show generally?

A. Table 221 shows analyses of the debits to street mains between 1906 and 1908, fixed capital December 31st, 1908.

Q. And where did you get your information from?

A. That information was obtained from the operating ledger 1906 to 1917, inclusive, operating ledger A 1918, operating journals 1906 to 1918, street main records Nos. 4 and 5, sundry debtors blotters covering the period 1906 to 1908, inclusive.

Q. All of those were the company's records?

A. Yes, sir.

Q. Furnished to you by the company?

32568 A. Furnished to me by the company.

Q. You made no changes in the figures?

A. I did not.

Q. And whether the figures are correct or not you don't know?

A. I don't know.

Q. Is the table correct?

A. It is.

Q. In the first column you have placed the year?

A. Yes.

Q. And in the second "Laid for the Consolidated Gas Company in dollars"?

A. Yes, sir.

Q. Next "Laid for other companies in dollars"?

A. Yes, sir.

Q. "Miscellaneous adjustments Consolidated Gas Company"?

A. Yes.

Q. Where did you get that from?

A. That comes from the information as shown by the operating ledgers and journals of the company.

Q. And "Miscellaneous adjustments other companies"?

A. That comes from the information as shown by the journals and ledgers of the company. 32570

Q. And the total?

A. The total is the total of the four columns.

Q. You have a note down at the bottom of that paper 221?

A. The note explains that the amounts $806.90 under miscellaneous adjustment Consolidated Gas Company—

The Master: 1906?

The Witness: 1906 (continuing) should be deducted from credits on account of retirements in order to obtain net retirements, as it was credited twice in error.

Q. Now, is that table correct? 32571

A. It is.

Q. Table 222, did you prepare that table?

A. I did.

Q. And what does that purport to show, generally?

A. Table 222 purports to show analyses of credits to street mains as shown on Table 220, fixed capital December 31, 1908, Consolidated Gas Company.

Q. Where did you get your data from for that table?

32572 Francis T. Mylott, Direct.

A. The data for that table was obtained from the operating ledgers 1906 to 1917, inclusive, operating ledger A 1918, operating journals 1906 to 1918, and sundry debtors blotters covering the period of 1906 to 1908, inclusive.

Q. In the first column you put the year?

A. Yes, sir.

Q. And in the second "street mains retired in dollars"?

A. Yes, sir.

Q. And in the third "charged to sundry debtors"?

32573 A. Yes, sir.

Q. And in the fourth "miscellaneous adjustments"?

A. Yes.

Q. Will you explain that?

A. Miscellaneous adjustments are—

The Master: They are explained in foot notes, aren't they?

The Witness: Yes, sir.

Q. All right. Now, "miscellaneous adjustments of other companies," will you explain that?

A. There are several adjustments that were found on the books in regard to the adjustment of some

32574 accounts of mains that were laid for other companies.

The Master: You just took those adjustments as they showed on the books?

The Witness: The adjustments are taken as shown on the company's books.

The Master: The total is the total of the four columns?

The Witness: The total is the total of the four columns.

Q. Is the table correct?

A. Yes.

Q. Whether the underlying figures are correct in the company's books, you don't know?

A. I don't know.

Q. Table 223, did you prepare that table?

A. I did.

Q. What does that purport to show, generally?

A. Table 223 shows street mains 1909 to 1918, fixed capital installed since December 31, 1908, of Consolidated Gas Company.

Q. And in the first column you have the year?

A. Have the year.

Q. The second is "Balance as of January 1st each 32576
year in dollars"?

A. Yes, sir.

Q. And the third column the debits?

A. The debits; yes, sir.

Q. What do you mean by that column?

A. The debits are the actual debits that were shown on the books between 1909 and 1918 for each year.

Q. And the credits?

A. The credits are the credits that are shown on the books between 1909 and 1918 of the Consolidated Gas Company for each year.

Q. What data did you use in the preparation of 32577
that table?

A. In the preparation of that Table I used the operating ledgers from 1909 to 1917, inclusive, and operating ledger A for 1918.

Q. Of the complainant company?

A. Yes, sir.

The Master: Let me ask you, Mr. Chambers. As I understand it in 1908 the company was required to set up fixed capital in various accounts under the Public Service Commission Law, wasn't it?

32578

Mr. Chambers: Yes.

The Master: And they set up these amounts at the figures shown here, is that the idea?

Mr. Chambers: Well, ask the witness.

The Master: I want to get your theory; I want to follow you along on that.

Mr. Chambers: I cannot answer that myself.

The Witness: Take Schedule 220, the figure is as shown as of December 31, 1908, and this is the fixed capital that has been installed since then.

Mr. Chambers: They started at zero, did they, in 1908?

32579

The Witness: Yes, January 1st, 1909.

The Master: They started at zero?

The Witness: Yes.

Mr. Vilas: They started with what they were required to set up.

The Master:- What I am trying to get at is this; this is what is in my mind: The company on what was it, January 1st, 1909, was required by the Public Service Commission to set up this fixed capital, is that correct?

Mr. Ransom: Required to set up fixed capital according to the books as of December 31, 1908, in a certain way prescribed by the Public Service Commission, showing certain amounts.

32580

The Master: Was that intended to show what you carried your assets at?

Mr. Ransom: On the books.

The Master: On the books?

Mr. Ransom: And became fixed capital.

The Master: Yes. Now, have you put in those figures at all?

Mr. Chambers: No, they have not.

The Master: Are you going to put in those figures as they appear there, as to all of their properties other than mains?

32581

Mr. Chambers: I think so. I think they will be in when we get through, somewhere, every one of them. That is my understanding.

The Master: How did you keep your fixed capital? Did you start with the Rowland appraisal?

Mr. Ransom: The Rowland appraisal.

The Master: Was that the basis of your fixed capital?

Mr. Ransom: The books were opened on November 11, 1884.

The Master: Yes.

Mr. Ransom: And on the basis of the Row- 32582
land appraisal?

The Master: Yes.

Mr. Ransom: And the consolidation agreement showing the cost of the property to the company at that time.

The Master: Don't let us have a speech. I just want to get a couple of items in mind. As I understand it, your books start with November, 1884, with $30,000,000, approximately?

Mr. Ransom: Yes.

The Master: Then you put—

Mr. Ransom: Yes, for real estate about $10,000,000. Yes, I suppose the other prop- 32583
erty—

The Master: The total was about $30,000,000 for which capital stock was to be issued. Then you add to that you say whatever you have put in since?

Mr. Ransom: Yes.

The Master: And I suppose you have charged against that property which you have withdrawn?

Mr. Ransom: We will.

32584

The Master: As of December 31st, 1908, your books showed that figure?

Mr. Ransom: They do.

The Master: That figure was less than the figure fixed by the Master in the previous case, wasn't it, as of 1905 or 1906?

Mr. Ransom: Well, not substantially.

The Master: Well, somewhat.

Mr. Ransom: I think perhaps principally as to land, and then a little less on mains, on account of the fact that there had been an inclusion of paving over mains.

32585 The Master: What I am trying to get at is this, in the line of what I indicated before: I think that the only safe basis of figuring the company's basis or a base upon which the rate can be figured, is the cost to this company, and I am likewise clear that that cost must start with the figures of 1884.

Mr. Chambers: Well, there is the only difference between my proof and your suggestion. You said you would let me put in prior to that, and that is what I am trying to show right straight through.

The Master: I think we are getting to a point
32586 now after six or seven months, where we can thresh this thing out, make our record and if the law is wrong as I apply it, have it corrected.

Mr. Chambers: That is all right, we have no quarrel with that.

The Master: In my judgment, the only safe basis is, as representing the value of the company's investment or the property in use, or whatever you call it, is in my view, the cost.

Mr. Chambers: Yes.

The Master: Now, you and I agree on that. Now, I say the cost to this company is the rea-

32587

sonable value of it in 1884, as represented by the Rowland appraisal, which was accepted by the State, because if the State was not satisfied with that figure, in view of the statute requiring stock to be issued only for the fair aggregate value, it should have taken some position on it.

Mr. Chambers: Well, to that—

The Master (interrupting): I am giving you my view. Now, for other reasons which I will state more at length, I am going to start in this case, and you might as well understand it now, with the Rowland figures in 1884. Now, if the company started with that figure and opened its 32588
books and opened its fixed capital account in 1908 based on that figure, plus additions and withdrawals—

Mr. Chambers: Yes, you add from year to year, and subtract the credits.

The Master: Yes, and there is not much dispute one way or another. Let's get that clearly on the record. Now, beginning with January 1, 1906, which is, I think, the time when the 80-cent rate began to apply, wasn't it?

Mr. Ransom: May 1, 1906.

The Master: May 1, 1906. The record can show clearly from year to year the invested 32589
capital, as I want it, at the beginning of the year, and the record will show the earnings during that year, and the impression I have now is that the earnings on that basis probably allowed a very full return, a full 6 per cent return.

Mr. Ransom: It certainly did not.

The Master: Well, I don't know. That is my impression, whether I am wrong or not.

Mr. Chambers: I am going to try this case just exactly as you are outlining it now.

32590

The Master: Now, assuming that the rate was fair throughout those periods and beginning in 1906 and 1907 the price of material and labor and the cost of manufacturing undoubtedly went up, now, what I would like to get as quickly as I can, is your view as to what it really cost, if there is any attack upon their records today. I can understand that you claim that certain overhead should be deducted, this hundred thousand dollars for emergency expense ought to be deducted—

Mr. Chambers: Now, you have got it.

32591 The Master: And things of that kind.

Mr. Chambers: Now, as to that, first we want to show just what they showed, and then show in a table what we take off.

The Master: If you get those figures in quickly and in order, so that the record will be clear, and so that we will have these figures right.

Mr. Chambers: You will be surprised with the quickness with which these figures are put in.

The Master: We will have a very simple solution of the whole problem. I am going to hold as I have indicated, that the investment in

32592 this property starts with thirty million dollars, plus additions and withdrawals.

Mr. Chambers: Well, that is a question. If you will just let me put in my proof, I say you should start with the original investment, and there is just a question of law there.

The Master: Let's get through with this case as fast as we can.

Mr. Ransom: Well, we do not acquiesce with that.

The Master: I know you do not. I am not going to satisfy both sides in this case, but I am indicating how I am going to decide it.

Mr. Chambers: Will you just bear with me a minute. We are substantially ready to show you all that you indicate, but you kept me in court here so that I did not have time to talk this over with these witnesses for a minute.

The Master: We will take a recess for a few minutes now.

Mr. Chambers: Last night you gave me an opportunity, and now you see the result. It is surprising, the ground I can cover, because you gave me a little while yesterday afternoon and all last evening to go over it. 32594

The Master: You are going to have from about four o'clock this afternoon also.

Mr. Chambers: That is fine. You will be surprised at the time I will save. I will double the time.

Mr. Ransom: Your Honor, there are some more of these witnesses have been brought here, and Mr. O'Brien is not here.

(Short recess.)

Q. Is Table 223 correct?

A. It is.

Q. And whether the underlying figures shown on the company's books are correct or not, you don't 32595 know, of course?

A. I do not.

Q. You took them as you found them?

A. On the books.

Q. And made no changes in their figures?

A. No, sir.

Q. Now, Table 224, did you prepare that?

A. I did.

Q. What underlying data did you use?

A. For Table 224, I used the operating ledgers from 1909 to 1917, inclusive: operating ledger A for

1918; operating journals 1909 to 1918; street main records 5 to 9, inclusive, and the sundry debtors blotters covering 1909 to 1918, inclusive.

Q. All these records were the company's records?

A. Yes, sir.

Q. And furnished to you by the company?

A. Yes, sir.

Q. You did not change any of their figures?

A. No, sir.

Q. And whether their figures are correct or not you do not know?

32597 A. I do not.

Q. Now, the tables show what, generally?

A. The table shows generally an analysis of the debits to street mains, 1909 to 1918; fixed capital installed, December 31, 1908; analysis of the debits as shown in Table 223.

Q. And in the first column you have stated the year?

A. Yes, sir.

Q. In the next, in dollars, mains laid by the Consolidated Gas Company or for the Consolidated Gas Company?

A. For the Consolidated; yes, sir.

32598 Q. And in the other column laid for other companies, in dollars?

A. Yes, sir.

Q. What do you mean by "Miscellaneous"?

A. "Miscellaneous" means charges that were billed to other than gas companies.

Q. And in the next column, "Consolidated Gas Company" you have—

The Master: Subdivision of miscellaneous adjustments.

The Witness: Yes.

Q. How did you figure this out?

A. That is taken from the information as shown on the ledger and journals of the company.

Q. And you figured that out from that information?

A. Yes, sir.

Q. "Charged to Sundry Debtors"—what is shown by that column?

A. "Charged to Sundry Debtors" is mains that were laid by the Consolidated Company for other companies and billed to other companies, and those are the charges as they appear on the books of the 32600 company.

Q. Is the table correct?

A. It is.

Q. Whether the underlying figures are correct or not you, of course, do not know?

A. No, sir.

Q. Now, Table 225, did you prepare that?

A. I did.

Q. What data did you use, Mr. Mylott, in preparing that Table 225?

A. The data used in the preparation of this table was—operating ledgers, 1909 to 1917; operating ledger A for 1918; operating journals 1909 to 1918; 32601 and the sundry debtors blotters covering the period from 1908 to 1918.

Q. What does the table purport to show, generally?

A. The table purports to show an analysis of the credits to street mains, 1908 to 1918; fixed capital installed since December 31, 1908, as shown on Table 223.

Q. In the first column you have the year, and the next column its retirement?

A. Yes, sir.

Q. Street mains retired?

A. Yes, sir.

Q. In dollars?

A. Yes, sir.

Q. And then in the next column, "Charged to Sundry Debtors"?

A. Yes, sir.

Q. And then "Miscellaneous Adjustments" in the next two columns?

A. Yes.

Q. Miscellaneous adjustments of the complainant
32603 company first, and then miscellaneous adjustments of other companies?

A. Yes, sir.

Q. Did you figure that out from the data you have indicated?

A. Yes, sir.

Q. Is the table correct?

A. It is.

Q. Whether the underlying data is correct or not, or whether the figures of the company are correct you, of course, do not know?

A. I do not.

Q. Now, Table 226, did you prepare that table?

32604 A. I did.

Q. What does it purport to show generally?

A. Table 226 shows a summary of street mains, 1906 to 1918, of the Consolidated Gas Company.

Q. What data did you use in the preparation of this table?

A. In the preparation of this table I combined Tables 220 and 223.

Q. And, of course, back of that the same data was used that was used for those two tables?

A. Yes, sir.

Q. Now, will you tell what you have shown on this table? Of course, the first column is the year. Explain the other columns, will you?

A. The column, "Balance, January 1st," I have taken the balance of January 1 as shown on Tables 220 and 223, and have added them together to get the total shown under "Balance, January 1."

On the debits I have taken the debits shown on Tables 220 and 223, and added them together and totaled them.

On the credits I have taken the credits as shown on Tables 220 and 223 and have added them together. 32606

The balance of December 31st is the balance of January 1, plus the debits, plus the credits.

Q. Now, is the table correct?

A. It is.

Q. Whether the underlying figures are correct or not you, of course, do not know?

A. I do not know.

Q. You took them as you found them?

A. I did.

Q. Now, Table 227, did you prepare that?

A. I did.

Q. What does that purport to show generally?

A. Table 227 shows unit prices for street main re- 32607
tirement 1906 to 1918, per lineal foot.

Q. Where did you get that information from?

A. From street main records IV to IX, inclusive, and from the Rowland appraisal, 1906 case, pages 4938 to 5017.

Q. Now, that Rowland appraisal, that is an exhibit in this case as you understand it?

A. It is.

Q. Those pages that you gave were the printed record in the old case of Willcox vs. Consolidated Gas Company?

A. Yes.

Q. Or rather, Consolidated Gas Company vs. Mayor, is the correct title of the case.

The Master: In the U. S. Supreme Court it is Willcox vs. Consolidated.

Mr. Chambers: It started originally as Consolidated Gas Company vs. Mayor.

The Master: It developed into Willcox vs. Consolidated in the United States Supreme Court.

Q. Now, your first column shows the size of the mains?

32609 A. Yes, sir.

Q. And the second shows retirement unit prices?

A. Yes.

Q. Why have you question marked there, after the 1 1/2 inch mains?

A. May I see the exhibit? The question mark after the 1 1/2 inch main is because in going through the street main records 4 to 9, inclusive, I was unable to find any inch and a half main had been retired.

Q. How about the 2-inch main?

A. The same applies to the 2-inch mains.

Q. That is not because you questioned anything, it was because from all the data that was furnished

32610 you, you found none that were retired of those two sizes?

A. Yes, sir.

Q. You have explained the second column there is the retired by the company?

A. Yes.

Q. At that unit price?

A. Yes.

Q. And then the last column is the unit price you found in the Rowland report?

A. Yes, sir.

Q. For the same size pipe?

A. Yes, sir.

Q. Is that table correct?

A. It is.

Q. Whether those unit prices are right, of course, you don't know?

A. No.

Q. You took them from the two sources that you have indicated?

A. Yes, sir.

Q. Now, Table 228, will you explain what that table purports to show generally? 32612

A. Table 228 shows the revised book cost of street mains between 1906 and 1918, of the Consolidated Gas Company.

Q. Where did you get your data from for that?

A. The data for that table is obtained from Tables 221, 222, 224 and 225, all except the "Balance of January 1, 1906."

Q. Now, the credits you obtained from the same tables?

A. Yes, sir.

Q. Where did you get the balance of December 31st for each year—no, first take the balance January 1, 1906. A. The balance January 1, 1906, was obtained by taking the balance of January, 1906, as 32613
shown on Table 226, and deducting from that balance $17,405.75 for 36-inch uptown main billed to the Standard in 1906; and deducting also $54,333.29 for 16—24-inch downtown main billed to the Mutual Company in 1906; and by also deducting the disused mains, January 1, 1906. The disused main was figured at the unit price used in the Rowland appraisal to obtain the dollars.

Q. Is that table correct?

A. It is.

Q. How did you get each column, will you explain that?

A. The column "Debits" I obtained by taking 221, 222, 224 and 225.

The column credits was obtained by taking Tables 221, 222, 224 and 225, and also including the increase between each year of the disused mains figured at the Rowland appraisal.

Q. Now, your notes A, B, C are self-explanatory?

A. Yes.

Q. What do you intend the debits to include?

32615 A. I intend the debits to include all the additions to street mains.

Q. And the credits?

A. The credits to include all the mains that are retired.

Q. Of the Consolidated Gas Company only?

A. The Consolidated Gas Company only.

Q. You have eliminated all mains laid for other companies in this table?

A. I have.

Q. And disused mains?

A. And disused mains.

Q. The table is correct?

32616 A. It is.

Q. Whether the underlying figures of the company are correct you don't know, of course?

A. I do not.

Q. You took them as you found them and did not change them?

A. That is right.

Mr. Chambers: I now offer in evidence Tables 220 to 228, inclusive.

Mr. Ransom: I make the same objection.

Mr. Chambers: Two copies furnished to the other side.

Mr. Ransom: It is simply another instance of building misapprehension on initial error. I especially object to the admission of what he describes as Schedule 228, because it is made entirely on a basis of calculation that is unwarranted with respect to disused mains, no support whatever in the record for doing any such thing. Of course if you proceed on that basis, and immediately mark out of the capital account any main that is temporarily disconnected or disused, as distinguished from main abandoned, you can do almost anything over a period of years to 32618
the capital account of a company.

The Master: Objection overruled.

Mr. Ransom: Exception.

Table 220 received in evidence and marked Defendants' Exhibit AA-225.

Table 221 received in evidence and marked Defendants' Exhibit AA-226.

Table 222 received in evidence and marked Defendants' Exhibit AA-227.

Table 223 received in evidence and marked Defendants' Exhibit AA-228.

Table 224 received in evidence and marked Defendants' Exhibit AA-229. 32619

Table 225 received in evidence and marked Defendants' Exhibit AA-230.

Table 226 received in evidence and marked Defendants' Exhibit AA-231.

Table 227 received in evidence and marked Defendants' Exhibit AA-232.

Table 228 received in evidence and marked Defendants' Exhibit AA-233.

Q. Did you prepare some more tables, Mr. Mylott?

A. Yes, sir.

Q. The next table you prepared was Table No. 240, was it not?

A. Yes, sir.

Q. What does that purport to show, generally?

A. It purports to show generally the tabulation of services between 1906 and 1918, of the Consolidated Gas Company.

Q. You have that in two parts, have you not?

A. Yes, sir

Q. Part 1, what does that show?

A. Part 1 shows the period between 1906 and
32621 1909.

Q. And Part 2?

A. Part 2 shows the period between 1910 and 1918.

Q. Why did you divide it into two parts?

A. It was divided into two parts because some of the data as shown in Part 2, between 1910 and 1918, was not obtainable for the period between 1906 and 1909.

Q. Where did you get your information for the table?

A. The information for the table was obtained from the report of operations of mains, meters and
32622 services covering a period from August, 1895, to the present.

Q. Of the Consolidated Gas Company?

A. Yes, sir.

Q. The title of that book is "Report of Operations on Mains, Services and Public Lamps," is it not?

A. Yes; it is mains, meters and services.

Q. Report of operations on mains and meter services?

A. And public lamps.

Q. And public lamps?

A. Yes, sir.

Q. Did you change any of the figures of the company?

A. I did not.

Q. You used them as you found them?

A. Yes, sir.

Q. Whether they are correct or not you do not know?

A. I do not.

Q. In this table you have set up first the size in inches of the services?

A. Yes, sir.

Q. And second the number? 32624

A. Yes, sir.

Q. And what do you mean by "Added" in the first period? You have put "Added"—a number of mains.

The Master: New services?

Q. Those are new services, you mean?

A. Yes.

Q. And "Services Removed"?

A. Yes, sir.

Q. And then the total at the end for the first period, Part 1 of the table?

A. The total at the end is the balance as of January 1, 1906, plus the added, minus the removed. 32625

Q. In the second part you have stated the size and the number and whether they are new or not?

A. Yes, sir.

Q. That is the way the company classified it?

A. That is the way the company classifies it.

Q. "Relaid"?

A. Yes, sir.

Q. And "Gained by Transfer"?

A. Yes, sir.

Q. And "Added and Cut Off," and so on?

A. Yes, sir.

Q. "Total Added and Cut Off," "Lost by Transfer"?

A. Yes, sir.

Q. "Total Removed"?

A. Yes, sir.

Q. Is the table correct?

A. It is.

Q. Now, you have some explanatory notes at the bottom, which are self-explanatory, are they not?

A. Yes, sir.

Q. You say the table is correct?

32627 A. It is.

Q. Table No. 241. Did you prepare that?

A. I did.

Q. What does it purport to show?

A. Table No. 241 purports to show a summary of service between 1886 and 1918, of the Consolidated Gas Company.

Q. In the table you have set forth the size, and the number in the next column?

A. Yes, sir.

Q. And "Additions"?

A. Yes, sir.

Q. "Removals"?

32628 A. Yes, sir.

Q. "Number as of December 31, 1918"?

A. Yes, sir.

Q. And "Net Charge"?

A. Yes, sir.

Q. What data did you use in the preparation of that table?

A. For the preparation of this table I used Table No. 240.

Q. And the same data, then, for this table as for that table?

A. Yes, sir.

Q. And whether those underlying figures are correct you do not know?

A. I do not.

Q. You made no changes in their figures?

A. I did not.

Q. Is the table correct?

A. It is.

Q. Table No. 242. Did you prepare that?

A. I did.

Q. What does that purport to show, generally?

A. Table 242 shows the net service changes from the year 1906 to 1918, of the Consolidated Gas Com- 32630
pany.

Q. And what data did you use for that?

A. I used the same data as for Table 240.

Q. In this table you show the size of the services?

A. Yes, sir.

Q. And these other amounts, what are those?

A. They represent the net change by sizes.

Q. Plus or minus.

A. Plus or minus.

Q. Minus being what, decrease?

A. Decrease.

Q. And plus means what?

A. Increase. 32631

Q. For each year?

A. For each year.

Q. Is the table correct?

A. It is.

Q. Table No. 243, did you prepare that?

A. I did.

Q. Where did you get your data from?

A. The data for that table was obtained as follows: For 1906 and 1907, it was obtained from the operating ledgers of the Consolidated Gas Company;

for 1908 to 1918, the data was obtained from reports of the Public Service Commission, of the Consolidated Gas Company.

Q. To the Public Service Commission?

A. Yes.

Q. Will you step down—those books are here—and just indicate the pages of those. First you are going to start with the 1918 report?

A. The 1918 report?

Q. Yes. Give us the page that you used?

The Master: Have you not a memorandum
32633 of it that he can tell from without looking at the books?

Mr. Chambers: No, he has none.

The Witness: No.

Mr. Chambers: It will not take but a minute, because they are all the same—

A. For 1918 I used page 20.

The Master: What line?

The Witness: Line 4. For 1917, I used page 20, line 4.

Q. I am wondering if it is not the same page. Maybe you better look—the same page up to a certain year, is it not?

32634 A. Unless they changed.

Mr. Ransom: The same page since 1914, I think.

The Witness: In 1916, I used page 20, line 4. In 1915, I used page 20, line 4. In 1914, I used page 22, line 4. In 1913, I used page 22, line 4. In 1912, I used page 22, line 4. In 1911, I used page 22, line 4. In 1910, I used the sheet attached on page 20.

Q. A typewritten sheet?

A. A typewritten sheet.

Q. Fronting page 20?

A. Fronting page 20.

The Master: The fourth line of the table?

The Witness: The fourth line of the table.

Q. Where it says "Services"?

A. Where it says "Services," under the column of 1910.

The Master: What is it, the fourth line of that column?

The Witness: The fourth line of that column.

Q. I said "fronting page 20"; it is pasted right on page 20. 1909? 32636

A. For 1909, I used the typewritten sheet pasted on page 20, line 3, under the column "Total," $36,375 of services.

Q. For 1908? We do not find it here; see if you can find it?

A. In 1908, I used page 24, under the column "Credits during the year," line 36 of services.

Q. You made no changes in the figures?

A. No, sir.

Q. But you took them as you found them?

A. Yes, sir.

Q. Whether they are correct or not, of course, you do not know? 32637

A. I do not.

Q. In the table you show the year and the balance as of January 1st, 1906. Where did you get that balance from for that year?

A. Those balances for those years were obtained from the books and the reports of the books or the operating ledgers of the Consolidated Gas Company, the reports of the Public Service Commission, all with the exception of the balance in 1906.

Q. And where did you get that from?

A. That was obtained by deducting an amount of $21,818.04, which is explained in the note below.

The Master: Deducted from what, from the book?

The Witness: Deducted from the book balance of January 1st, 1906.

Q. And the additions?

A. The additions of 1906 and 1907, were obtained from the ledgers, the operating ledgers of the Consolidated Gas Company.

Q. And for 1908?

A. The 1908 was obtained from the report to the Public Service Commission.

32639 Q. "Withdrawals and Retirements"?

A. "Withdrawals and Retirements" were obtained for the years 1906 and 1907, from the operating ledgers of the Consolidated Gas Company, and for the years 1908 to 1918, inclusive, they were obtained from the reports of the Public Service Commission.

Q. Is the table correct?

A. It is.

Q. Table No. 244. What does that purport to show generally?

A. Table 244 shows services, 1908 to 1918, fixed capital installed since December 31st, 1908, of the Consolidated Gas Company.

32640 Q. What data did you use in the preparation of that table?

A. For the preparation of this table I used reports to the Public Service Commission for the years 1909 to 1918, inclusive of the Consolidated Gas Company.

Q. Could you tell me the pages? Would they be the same pages?

A. No, they would not. They would be different pages.

Q. Can you tell me the pages, starting from 1908, and running backward—or rather 1909?

A. For 1909, I used page 22, line 25. For 1910, I used page 22, line 25. For 1911, I used page 21, line 25. For 1912, I used page 21, line 25. For 1913, I used page 21, line 25. For 1914, I used page 21, line 25. For 1915, I used page 22, line 23. For 1916, I used page 22, line 23. For 1917, I used page 22, line 23. For 1918, I used page 22, line 23.

Q. Is the table correct?

A. It is.

Q. You did not change any of the figures that you found in the report?

A. I did not. 32642

Q. Whether they are correct or not you, of course, do not know?

A. I do not.

Q. And this shows the balance on January 1st in dollars?

A. Yes, sir.

Q. And the additions in dollars?

A. Yes, sir.

Q. Then the balances as of December 31st of each of those years?

A. Yes.

Q. Table No. 245. What did you use?

A. Table No. 245 is a summary of Tables 243 and 244. 32643

Q. And, of course, you used the same data?

A. I did.

Q. The underlying data would prevail as to this exhibit?

A. It would.

Q. Is that table correct?

A. It is.

Q. What do you show there?

A. On Table 245 we show the balance as of January of each year, the additions by years, the with-

drawals and retirements by years, and the balance at December 31, 1918.

Q. All in dollars?

A. All in dollars.

Q. Is that table correct?

A. It is.

Q. Whether the underlying data is correct or not, of course, you do not know?

A. I do not.

Q. Table No. 246. Did you prepare that?

A. I did.

32645 Q. What does that purport to show?

A. That shows the unit prices for service retirements, 1906 to 1918.

Q. Taken from what?

A. That is taken from the report—it is taken from the same data.

By the Master:

Q. It is the Rowland appraisal?

A. No, it is the same as the Rowland appraisal, but it is not taken from the Rowland appraisal.

Q. Yes, the same?

A. Yes.

By Mr. Chambers:

32646 Q. Where did you get it from?

A. It is taken from the same data as is contained in Table No. 240.

Q. And whether those prices are the correct unit prices or not, you do not know?

A. I do not.

Q. But you used the figures as you found them?

A. I did.

Mr. Chambers: I now offer in evidence so much of the pages as Mr. Mylott has described in the Public Service Commission reports that relate to services, Tables 243 and 244, in evidence, which we have here.

32647

The Master: You are now offering the reports of the Public Service Commission?

Mr. Chambers: So much of those papers as are applicable, which he has described.

The Master: Yes, they are received.

Mr. Ransom: That is subject to the same considerations as I pointed out before, I assume.

The Master: Yes.

Mr. Chambers: I now offer in evidence Tables 240 to 246, inclusive, and furnish the other side with two copies.

The Master: They are received over the same objection.

32648

Mr. Ransom: I object specifically to these on the grounds which I have indicated with respect to the tables as to mains. They are made upon a basis that is forbidden by the uniform system of accounts, unsound in economics, unsound in law, and unsound in fact. This idea of deducting disused, when they have not in any way been withrawn from service and have not been written off under the uniform system of accounts, is a specious and illogical and illegal basis, for which this young man's present employers ought to know better.

The Master: Objections are overruled.

32649

Mr. Ransom: Exception.

Mr. Chambers: If the Master please, the last table was Defendants' Exhibit AA233, and if the Public Service Commission reports did not have a number, the next would be Exhibit AA234.

The Master: No, we do not need to number that. The Public Service Commission reports are in evidence without a number, using so much of it as is offered from time to time by either side.

Table No. 240 marked Defendants' Exhibit AA234.

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Table No. 241 marked Defendants' Exhibit AA235.

Table No. 242 marked Defendants' Exhibit AA236.

Table No. 243 marked Defendants' Exhibit AA237.

Table No. 244 marked Defendants' Exhibit AA238.

Table No. 245 marked Defendants' Exhibit AA239.

Table No. 246 marked Defendants' Exhibit AA240.

32651 Mr. Chambers: That is all for this witness.

The Master: We will suspend cross-examination.

Mr. Ransom: You have your working papers here, have you not?

The Witness: I have.

Mr. Ransom: You are entirely willing to have someone representing the complainant work with you on those working papers?

Mr. Chambers: They will go when we are present. We are not going to turn over our working papers.

Mr. Ransom: I mean work with him?

32652 The Master: What I would like to have you do is have you, Mr. Mylott, arrange with Judge Ransom where they can sit down with you and go over your working papers and check them up.

Mr. Ransom: Can we do that this afternoon?

Mr. Chambers: We can't spare him.

The Master: It has got to be done, and it ought to be done this afternoon.

Mr. Ransom: We are willing to start in.

The Master: Start in at Mr. Maltbie's office at two o'clock.

32653

Mr. Ransom: All right.

Mr. Chambers: When are you going to cross-examine?

The Master: Tomorrow morning at nine-thirty.

Mr. Ransom: Is this the last time he is going to appear on the stand in this case?

Mr. Chambers: I expect it will be I won't say positively.

The Master: Tomorrow morning at nine-thirty to cross-examine Mr. Mylott.

Mr. Ransom: Well, they have put in some 75 to 100 tables, built on a very specious assumption and we cannot check all these figures. 32654

The Master: When will you be ready?

Mr. Ransom: I may be able to be ready sometime tomorrow morning.

Mr. Chambers: I would like to state on the record that this man is very busy, he has a lot to do, and he can't sit around and wait for them, now that he is here. I am willing they should have a reasonable time before they go on, but give us in turn when we ask a little adjournment, we ought to have it.

Mr. Ransom: They had weeks time after time.

Mr. O'Brien: Don't you get tired of hearing all these vaporings, your Honor? 32655

The Master: I get tired of all these vaporings. When do you think you will be ready to cross-examine him, so that we can go on and do something else in the meantime?

Mr. Ransom: Day after tomorrow morning.

The Master: That will be Thursday morning?

Mr. Ransom: Yes.

Mr. Chambers: How much time will you consume, about?

Mr. Ransom: If there are as many errors—

32656

The Master: Probably not over a half hour?

Mr. Ransom (continuing): As before, it will take some time. If he has done what he stated, it will be a very short time.

NATHAN C. LENFESTER, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

32657 DIRECT-EXAMINATION BY MR. O'BRIEN:

Q. You are here pursuant to a subpoena served upon you yesterday?

A. Yes, sir.

Q. What is your business at the present time?

A. Cashier of the National City Bank of New York.

Q. And you have been connected with that institution for many years?

A. Connected with that institution for a little over two years.

Q. Who is the president of that institution?

Mr. Ransom: Objected to as immaterial, no
32658 bearing on this case.

The Master: Objection sustained.

Mr. O'Brien: Your Honor, this is not oil.

Mr. Ransom: It is gas.

Mr. O'Brien: Is your Honor going to take the position that it does not make any difference whether the officers of this company are officers of a bank where this company has deposited thousands of dollars at a lower rate of interest than they could get somewhere else?

The Master: Ask the questions and I will answer that.

Q. Is Mr. James A Stillman the president of this company?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Is Mr. William Rockefeller a director of this company?

Mr. Ransom: Objected to on the same grounds.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Is Mr. Percy Rockefeller a director of this company? 32660

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. O'Brien: Exception in each instance.

Q. Was Mr. Frank A. Vanderlip a director of this company until recently?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. When did he resign his position in this bank?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Who are the directors of the National City Bank? 32661

The Master: Same ruling.

Q. Is Mr. John A. Garver not a director of this bank?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Are Shearman & Sterling tenants in 55 Wall Street?

Mr. Ransom: Objected to; very immaterial.

The Master: Same ruling.

Q. Are the firm of Shearman & Sterling attorneys for the National City Bank?

Mr. Ransom: Same objection.

The Master: Objection sustained.

Mr. O'Brien: Exception in each instance.

Q. Has the Consolidated Gas Company an account with the National City Bank?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Do you know what the status of that account is at the present time?

32663 Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. What connection has the National City Company with the National City Bank?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Is the National City Bank a subsidiary of the National City Company?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. How much stock, if you know, has Nicholas F. Brady in the National City Bank?

32664 The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Is he on the directorate of that company?

The Master: Same ruling.

Q. Isn't Percy A. Rockefeller a member of the Board of Directors of the National City Bank?

The Master: Same ruling.

Mr. O'Brien: Your Honor, in this connection you have expressed your views with respect to proving community of interests in the Consolidated Gas Company and any companies that sold oil to them. You have not as yet expressed any

32665

decision of your attitude towards the proposition of community of interests in the financial institutions where the company does its fiscal business.

The Master: I thought I had indicated a very definite attitude by my rulings here.

Mr. O'Brien: Well, am I to assume that it is your position with respect to that that it does not make any difference in this case whether the men who are in control of it or hold large interests in the complainant company, are interested in the National City Bank, substantially?

The Master: You have a right to draw any fair inference from the rulings I have made. 32666

Mr. O'Brien: Well, you are aware of Mr. Rockefeller's position with the complainant company, you are aware of the position of Mr. Stillman, you are aware of Mr. Vanderlip being on the Executive Committee.

The Master: And you are aware of my ruling.

Mr. O'Brien: And you are aware of Mr. John A. Garver's connection and so on?

The Master: Yes.

Mr. O'Brien: Well, your ruling will be the same with respect to any other questions asked about any other gentlemen who are stockholders, 32667 or who are officers or directors in the National City Bank?

The Master: That is right.

Mr. O'Brien: That would be your ruling, and I note an exception to all of your rulings, and I postpone the further questions of the witness until I have the stock lists here, and I may make the record a little more complete.

The Master: Witness excused. Next witness.

32668 Nathaniel Silverman, Direct.

NATHANIEL SILVERMAN, a witness for the defense, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CHAMBERS:

Q. Where are you employed now, Mr. Silverman?

A. Employed by M. and L. W. Scudder, Certified Public Accountants, 120 Broadway, N. Y. City.

Q. How long have you been working for the Messrs. Scudder?

A. I had worked with M. and L. W. Scudder starting in 1942, about October, until about December, 1944, when I enlisted in the United States Navy, and
32669 since my release from the United States Navy, about April, 1946, I have been employed by M. and L. W. Scudder.

Q. What was your position in the navy?

A. Chief Petty Officer.

Q. During the war?

A. Yes, sir.

Q. And all the while that you have been with the Messrs. Scudder, you have been doing accounting work?

A. Yes, sir.

Q. And do you remember what matters you have
32670 worked on generally, some of them?

A. Well, I worked on the investigation of the Chicago Surface Lines in behalf of the City Council of the City of Chicago; I worked on the audit of the Pittsburgh Bank for Savings, the Queens Borough Corporation, real estate, the Butter and Egg Trust Investigation in behalf of New York State; the Money Trust Investigation, in behalf of the Pujo Committee of Congress; the Empire Steel Company of Catasauqua, Pa.; the Monarch Road Roller Company, of Groton, N. Y.; the Port Huron Engine & Thresher Company, Port Huron, Michigan; the Cambria Fuel Company.

The Master: Well, you are calling Mr. Silverman just as an accountant to prove up tables and figures.

Mr. Chambers: Yes.

The Master: You need not waste any more time on that.

Q. What college are you a graduate of, or university?

A. New York University.

Q. And with what degree?

A. Bachelor of Commercial Science.

Q. What year did you graduate? 32672

A. 1912.

Q. Now, you have been working on this Consolidated Gas case?

A. Yes, sir.

Q. And were you directed to prepare certain tables?

A. Yes, sir.

Q. And you have prepared them?

A. Yes, sir.

Q. And who gave you those instructions?

A. Dr. Maltbie.

Q. Well, the first table that you prepared pursuant to those instructions was Table VIII, was it?

A. Table VIII, yes, sir. 32673

Q. Now, Mr. Silverman, what does that table purport to show, generally, first?

A. That table purports to show with respect to the real estate account as it appears in the special accounts ledgers of the Consolidated Gas Company from 1884 to 1905, the opening balances at the beginning of each year from 1885 to 1905, inclusive; the closing balances as it appears from each year from 1884 to 1905, inclusive; also the total charges to this particular account as shown by this table.

Q. Which you call debits?

A. Which I call debits, from 1884 to 1905, as shown by this table; and also the total credits by years as shown by this table from 1884 to 1905.

Q. All in dollars?

A. All in dollars.

Q. Now, what data did you use in compiling the table or making the tabulation?

A. I used the special accounts ledgers of the company and the real estate account as it appears in those ledgers.

32675 Q. Of the Consolidated Gas Company?

A. Yes, sir.

Q. Now, whether those figures were correct or not, you don't know?

A. I don't know.

Q. You made no changes in the figures?

A. No, sir.

Q. And is the table correct?

A. It is.

Q. Now, Table 9, did you prepare that?

A. I did.

Q. Now, what does that table purport to show, generally?

32676 A. That table purports to show, with respect to the real estate M account, as it appears in the special accounts ledger of the Consolidated Gas Company from 1884 to 1905, the opening balances.

The Master: What is the M account?

The Witness: The real estate M account.

The Master: What is the M account

The Witness: M refers to Murray, which was a particular piece of property, the Murray property.

The Master: Is this schedule applicable only to land, Schedule 8?

The Witness: It is the real estate account, and the succeeding tables which support Table VIII indicate that it is applicable to various items.

The Master: Well, I see the index or the title page says "Book Cost of Real Estate—Land." The page ahead of that. Is this intended to refer only to land?

Mr. Chambers: Yes.

The Master: Is that correct, Mr. Maltbie?

Mr. Maltbie: Ultimately it refers only to land.

The real estate account has charges for buildings and changes in buildings and smokestacks, and land, and the only way to get it out is to put it in and then take out the part that relates to land. 32678

The Master: All right.

Q. Now, Table VIII relates only to that M Account, that particular piece of property?

A. Table IX.

Q. Table IX?

A. Yes, sir.

Q. Can you say what you used, what data?

A. I used the special accounts ledger of the Consolidated Gas Company from 1884 to 1905, inclusive, and the real estate M Account, as it appears in those ledgers. 32679

Q. And you stated the balance in each year beginning with 1899, the first year there was a balance?

The Master: 1898.

Mr. Chambers: 1898—the first balance was 1899.

The Master: January 1st balance.

Mr. Chambers: Yes.

The Master: But there was a balance December 31, 1898?

The Witness: The first balance appearing for January 1st was for the year 1899.

Q. And then you stated the balance for the succeeding years as of January 1st?

A. Yes, sir.

Q. And the debits. What does that represent?

A. The debits represents the charge to that account, or the charges appearing in that account.

Q. And the credits?

32681 A. The credits represent the credits appearing in that account.

Q. And the balance as of December 31st?

A. The balance as of December 31st indicates the balance as shown by that account.

Q. Is the table correct?

A. It is.

Q. Whether the figures you found in the books are or are not correct, you, of course, do not know?

A. That is right.

Q. You took them as they were?

A. Yes, sir.

Q. As you found them?

32682 A. Yes, sir.

Q. Table X, did you prepare that?

A. Yes, sir.

Q. And what does that purport to show, generally

A. Table X shows the total debits and credits by properties. The total debits and credits represent the total debits and credits as they appear in the Real Estate Account and the Real Estate Account in the Consolidated Gas Company's Special Account Ledgers from 1884 to 1905, inclusive.

Q. You made no changes in their figures?

A. I made no changes in the company's total charges and credits, but this particular table as it is represented here does not appear anywhere in the company's records in this form, it is not in any of the books or records that I have examined.

Q. In this form as set up in this way?

A. Yes, sir.

The Master: But the figures you have got here are exactly the figures you found somewhere in those books?

The Witness: The total credits and total debits correspond exactly with the total credits and total 32684
debits of the two accounts involved.

Mr. Ransom: In the company's books.

The Witness: In the company's books.

By the Master:

Q. The total balance I see here December 31, 1905, I suppose that means, $10,879,329.63?

A. Yes, sir.

Q. Is to be added to the $50,000 item of real estate M?

A. The $10,879,329.63 corresponds with the closing balance on Table 8, December 31, 1905.

Q. Well, is the $50,000 to be added to that?

A. The $50,688.65 corresponds with the closing bal- 32685
ance in the real estate M account of December 31, 1905, Table 9.

Q. Is that to be added to the other? Are they to be added together?

A. Not necessarily. They may be added together, or used separately.

Q. I mean for the total real estate balance they are to be added together?

A. Yes.

By Mr. Chambers:

Q. Now, just to call your attention to Item No. 1, acquired from merged company, $10,332,000, that is the same as—

The Master: That is the same as Table 11, shows the opening items in the ledger, the journal entries in the ledger.

Q. That is the same as Table 11?

A. Yes.

The Master: The details of the $10,000,000 and odd are set out in Table 11?

32687 The Witness: Yes, sir.

The Master: That is where you got that from?

The Witness: Yes, sir.

Q. Is this Table 10 correct?

A. Yes, sir.

Q. Whether the company's figures are you of course do not know?

The Master: Won't one general question cover that? All of these figures you have taken from the company's books, and all of these tables you have taken figures without attempting to justify the figures, or satisfying yourself that they were

32688 correctly put in the books?

The Witness: Yes, sir.

The Master: You took them as you found them on the books?

The Witness: Yes, sir.

The Master: That is what you want, Mr. Chambers, is it?

Mr. Chambers: Yes.

Q. Now, Table 11, what does that purport to show?

A. Table 11 purports to show the details supporting Item No. 1 in Table 10A.

The Master: In Table 10?

The Witness: It is Table 10, correct.

Q. Is Table 11 correct then?

A. Yes, sir.

Q. Table 12, did you prepare that?

A. Yes, sir.

Q. Table 11 is a correct transcription of the books, of the figures in the books?

A. Yes, sir.

Q. Table 12, what does that purport to show, generally?

A. Table 12 purports to show the details supporting 32690
Item No. 2, as it is shown in Table 10.

Q. And relates to the particular piece of property known as Hester Street?

A. Yes, sir.

Q. From 1884 to 1905?

A. Yes, sir.

Q. Now, the first item, September 15, 1893, $800 for material and labor, total charge $2,976.82, $2,176.82 charged to repairs to buildings—will you explain that?

Mr. Ransom: I object to that. He is putting into the record portions of this proposed exhibit of which no copies have been furnished to the 32691
complainant.

Mr. Chambers: Just by way of explanation.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. According to the book record $800 was charged to the real estate account as shown by this particular item. It appeared that the total charge in connection with the particular operation was, $2,976.82, of which the balance, or $2,176.82 was charged to repairs to buildings, another account.

Q. Now, paving blocks—that item—explain whether you found that sum, or how you made that up?

A. Paving blocks amounting to $81—the item of paving blocks amounting to $81, is made up of several charges between the dates of May 31st and June 9th, 1894, charged to the real estate account.

Q. You have those items in your working papers?

A. Yes, sir.

Q. So that it is the sum total of the various items for paving blocks between those dates?

32693 A. Yes, sir.

Q. Now, shutters?

A. $475 is charged to the real estate account for shutters under date of March 30, 1903.

Q. And iron shed? A. $315 is charged to real estate account for iron sheds, and this amount is made up of several items between the dates of May 8th and June 5th, 1903.

Q. You have those items in your working papers?

A. Yes, sir.

Q. All taken from the company's books?

A. Yes, sir.

32694 The Master: As I understand it, in all these various schedules where you show two dates with a dash between it indicates that the sum set opposite that is the total of a number of items found between those two dates?

The Witness: Yes, sir.

Q. And that you have the particular sums in your working papers?

A. Yes, sir.

Q. And can give them?

A. Yes, sir.

Q. Now, take this Table 12, whether these shutters and paving blocks and repairs to the buildings are additions to real estate you do not pretend to say?

A. No, sir.

Q. You took them as you found them?

A. Yes, sir.

The Master: That is so as to all the other items here where similar items appear?

The Witness: Yes, sir.

Q. You don't know whether they were put in, or whether that amount was paid?

The Witness: No, sir. 32696

The Master: Simply that the books show it.

The Master: Yes, sir.

Q. Or whether they are additions to real estate?

A. No, sir.

Q. Now, Table 13 is made up in substantially the same way as this?

Mr. Ransom: I suggest that the copies be given to the complainant.

The Master: You will get them.

Q. Table 13 is made up in substantially the same way except that it relates to No. 2 Irving Place?

A. Yes, sir.

The Master: That is so as to Tables 14, 15, 16 and 17? 32697

The Witness: Yes, sir.

The Master: Including 17 they are all the same?

The Witness: Yes, sir.

Q. And those tables that the Master just mentioned are correct?

A. Yes, sir.

Q. Now, Table 19, just explain that, will you, please?

A. Table 19 shows the detail with respect to Item No. 9 as it appears in Table No. 10. It indicates a credit appearing in the real estate account amounting to $180,000 with respect to the property East 15th and East 16th Streets, east of Avenue C, 1884 to 1905.

Q. Shows to whom?

A. New York Edison Company.

Q. What did you learn about that, and from whom?

A. I learned that this particular piece of land—

Mr. Ransom: I object to it as incompetent unless he identifies—

32699 Q. Did you have a conversation with somebody in the Consolidated Gas Company about it?

A. I had a conversation with Mr. Davidson of the Consolidated Gas Company.

Q. What did he tell you in regard to that particular piece of property?

A. Mr. Davidson informed me that this particular piece of property was sold by the Consolidated Gas Company to the New York Edison Company, and on the same day that that conveyance or sale was made, the New York Edison Company sold the same property to the New Amsterdam Gas Company.

32700 Q. Whether that is correct or not you would not know, except what he said about it?

A. Yes, sir.

Q. Now, Table No. 20, you made that up in the same way as these other tables you have spoken of?

A. Yes, sir.

Q. And Table 21?

A. Yes, sir.

Q. And Table 22?

A. Yes, sir.

Q. And Table 23?

A. Yes, sir.

Q. And Table 24?

A. Yes, sir.

Q. And Table 25?

A. Yes, sir.

Q. And 26?

A. Yes, sir.

Q. And 27?

A. Yes, sir.

Q. And 28?

A. Yes, sir.

Q. And 29?

A. Yes, sir. 32702

Q. And 30?

A. Yes, sir.

Q. Those are all correct?

A. Yes, sir.

Q. Table 31, will you explain that briefly? What does it purport to show?

A. Table No. 31 purports to show detail supporting Item No. 21 as it appears on Table No. 10. It indicates that a journal entry was made under date of September 30, 1903, crediting the real estate account for $247,858.

Q. For that land condemned by the City?

A. That land condemned by the City, apparently. 32703
The Sundry Debtors Blotter No. 12, page 241, under date of September 30, 1903, shows a charge to the Comptroller of the City of New York for $294,511.03 for real estate, East 20th and 22nd Streets. The journal entry on page 187, September 30, 1903, shows a credit to the real estate account, as previously stated, amounting to $247,858. It also shows that the difference between $294,511.03 as charged to Comptroller of the City of New York, and $247,858, as credited to real estate account, or $46,653.03, was

credited to the account called "Interest on Bonded Debt."

The Master: I suppose your claim is that that entire amount should have been credited to real estate. Is that the idea, Mr. Chambers?

Mr. Chambers: Not exactly that.

The Master: What is the point about it?

Mr. Chambers: That should be charged to the depreciation reserve, buildings on it.

Q. The point is, that does not contain anything in regard to buildings at all?

32705 A. No, sir, none of these entries appear to relate to buildings.

Q. Is that table correct?

A. Yes, sir.

Q. Tables 32, 33, 34, 35, 36, 37, 38 and 39—those tables are correct?

A. Yes, sir.

Q. And were prepared in the same way as the other tables you have spoken of?

A. Yes, sir.

Q. Now, Table 41, that purports to show the properties at 62nd and 63rd Streets, book entries relating to that property?

32706 A. Book entries as to Avenue A and First Avenue, 62nd and 63rd Streets, 1884 to 1905.

Q. Explain that table briefly, will you?

A. The table shows that the real estate account was charged under date of February 11, 1889, for $4,650—

Mr. Ransom: I object to the reading in of portions of this exhibit of which no copy has been furnished to the complainant.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. This charge was for grading property and digging cellar. The total amount of the charge was $5,877.

32707

and a portion of that amount was charged to tank and holders, that is, $1,227 was charged to holders. The real estate account with respect to this property was also credited under date of September 30, 1905, an amount of $178,078.00. The sundry debtors blotter, No. 16, page 44, shows a charge to the Standard Gas Light Company amounting to $178,078 for a parcel of land situated in the Borough of Manhattan, beginning at the southwest corner of Avenue A—

Q. You need not give that, but that property was sold to the Standard Gas Light Company, according to those entries?

32708

A. Yes, sir.

Q. Was there anything that referred to buildings in that account except what you have spoken of above, digging cellar, and tank and holder?

A. No, sir.

Q. Now, the virtual effect of these entries is to reduce the real estate account by the amount of the credit?

A. By the amount of the credit, yes, sir.

Q. Did the book entry show the cost of that land?

A. The book entries that I examined did not show the cost of the land.

32709

Q. Do you know the cost of the land?

A. No, sir.

Q. The table is correct, is it?

A. Yes, sir.

Q. Tables 42, 43, 44, 45, 46, 47, 48 and 49—those were all prepared by you?

A. Yes, sir.

Q. And they are correct?

A. Yes.

Q. They were prepared in the same way as you have heretofore indicated?

A. Yes, sir.

Q. And Table 51 also?

A. Yes, sir.

Q. And Table 52?

A. Yes, sir.

Q. And 53?

A. Yes, sir.

Q. And 54?

A. Yes, sir.

Q. 55?

A. Yes, sir.

Q. And they are all correct, those tables?

32711 A. Yes, sir.

Q. Now, take Table 58, will you explain that?

A. Table 58 purports to show the detail by properties of Item No. 48, as it appears in Table No. 10.

Q. Where did you get your data for this table?

A. I got the data for this table from examination of the real estate account as it appears in the special accounts ledgers of the Consolidated Gas Company from 1884 to 1905; examination of the special assessment account as it appears in the special account ledgers of the Consolidated Gas Company from 1884 to 1905; also from examination of various assessment bills on file with the Consolidated Gas Company; in some instances information received from Mr. Davidson of

32712 the Consolidated Gas Company, and in other cases where I had received neither information that would enable me to compile this table, or where the book records were not complete, I made an examination of the records of the Bureau of Assessments and Arrears, Finance Department, City of New York.

Q. You had quite a job on your hands to dig up this information?

A. Yes, sir.

Q. And from all the data that you were able to obtain, is it correct?

A. Yes, sir.

The Master: You have the working papers showing the various data?

The Witness: Yes, sir.

The Master: And where the figures came from?

The Witness: Yes, sir.

The Master: So you can show it to the experts of the other side?

The Witness: Yes, sir.

The Master: We will take a recess until 2 P. M.

Mr. Ransom: May copies be furnished to the complainant to look over during the recess? 32714

The Master: Yes, let them have a copy.

Recess.

Afternoon session.

NATHANIEL SILVERMAN, resumed the stand.

DIRECT-EXAMINATION CONTINUED BY MR. CHAMBERS:

Q. We were on Table No. 58 when we left off. Table No. 59 shows the Fixed Capital December 31, 1908, Real Estate, 1906 to 1918. Why that 1908 in there, do you recall? 32715

A. Table No. 59 purports to show the balances at January 1st, total charges or debits for each year, the total credits for each year, and the balances at the end of each year, from 1906 to 1918, inclusive, as shown by the Real Estate Account as it appears in the Operating Ledgers of the Consolidated Gas Company for the years 1906, 1907 and 1908.

By the Master:

Q. That is worked out on the same basis very largely as your Table VIII, that you took from 1884 to 1905?

A. Yes, sir.

Q. Then you followed that with a detailed statement and then you supplemented that detailed statement with the same sort of tables that you prepared for the years between 1884 and 1905?

A. Yes, sir.

Q. So that what you have done is, you have sub-
32717 divided this list of tables or series of tables into two classes, practically, from 1884 to 1905, and then from 1906 to 1918?

A. There is another class from 1909 to 1918 under the caption "Land Devoted to Gas Operations."

Q. Yes, but I mean as to these two things we are talking about.

A. With this exception, that Table 59 includes the real estate accounts for the years 1906, 1907 and 1908, and from January 1, 1909, to December 31, 1918, the real estate charges and credits and balances appear in an account called Fixed Capital, December 31, 1908.

32718 Q. Yes, but I got the impression as I glanced at this that it was intended to represent the same sort of information.

A. Yes.

Mr. Chambers: Yes, you are right.

By Mr. Chambers:

Q. I do not remember what it was, but that Table No. 60 is substantially gotten up in the same way as Table No. 10.

A. Yes, sir.

Q. Only it is for this later period.

A. Yes, sir.

Q. And shows the different pieces of property, the debits and credits and the balances?

A. Yes, sir.

Q. I do not know whether I asked you, is Table 59 correct?

A. Yes, sir.

Q. And Table 60?

A. Yes, sir.

The Master: I do not think you need repeat that as to every table.

By the Master:

Q. All these tables you say are correct? 32720

A. Yes, sir.

Q. In accordance with the methods you say you pursued?

A. Yes, sir.

Q. And the figures or totals are correct?

A. Yes, sir.

By Mr. Chambers:

Q. I want to ask you as to Table No. 62, what lots are those, can you tell?

A. I would have to refer to my map.

Q. Have you got your map?

A. I think I have.

The Master: Is it necessary for you to bring that out? 32721

Mr. Chambers: Yes, for the years.

Q. You get your map.

The Master: Mr. Chambers has not asked any special questions about Table No. 61, because it is in the same form as the previous tables.

A. It refers to Lots 54, 56, 59 and 60, Block 870, as shown by Map No. 22.

Q. Tables Nos. 63, 64, 65 and 66. As to Table No. 66, can you identify those lots?

A. Yes, sir, by referring to my working papers.

Q. What block is it?

A. Table No. 66, book entries, Tenth Avenue to Marginal Street, between 16th and 17th Streets, relates to Block 688, Lot 21, this information having been furnished by Mr. Alrich, representing the Consolidated Gas Company.

Q. To you?

A. To me.

Q. Table No. 67. Where is that property located; on what block and lot?

32723 A. Block 710, Lot 14.

Q. Table No. 68, I want to ask you a question or two about that. Can you identify that property as to block and lot on Table No. 68.

A. Table No. 68 includes Block 662, Lots 8 and 11, which were the bulkheads between 16th and 18th Streets, on the North River.

Q. And this data all came from the book entries as to that?

A. (Continued.) Block 666, Lots 3 and 12; Block 688, part of Lot 1; and Block 689, part of Lot 1. And this information was furnished to me by Mr. Alrich, representing the Consolidated Gas Company.

32724 Q. And you obtained all the data with the exception of the location from the book entries of the Consolidated Gas Company?

A. Yes, sir.

Q. When was the property taken, between what dates, were you able to ascertain?

A. Yes, sir, by referring to my working papers.

Q. All right, do so, will you?

A. Table 68?

Q. Yes, when the property was taken.

A. Title and possession passed January 8, 1901, May 1, 1904, August 1, 1904. This information was

furnished to me in written form by Mr. Davidson, representing the Consolidated Gas Company.

Q. When was it credited to the capital account?

A. It was credited to the capital account in December, 1913.

Q. That is approximately nine years later?

A. Yes, sir.

Q. You have said the tables are all correct?

A. Yes, sir.

Mr. Ransom: Well, what does he mean by correct? Does he mean they are copied from the books? I should be very much surprised if he 32726
would say that about the entries he put down on Table No. 68

The Master: He says his calculations are correct in the manner he has described.

Q. Whether the underlying figures are correct you do not know?

A. No, sir.

Mr. Ransom: He has purported to put down entries from the books when there is no such thing in the books.

The Master: That is a matter for cross-examination.

Mr. Ransom: The witness ought to say 32727
whether he has—

The Master: He says they are correct.

Mr. Ransom: He has taken figures that are probably in the books, and given them some label that suits his fancy.

Q. Still speaking of Table No. 68, that is to say this property was carried in the capital account nine years after it was actually taken, if that information is correct as to when it was taken?

A. Yes, sir.

3272S

Q. Table No. 69. Can you give the lot and block?

A. Table 69; Block 689, Lot 17; Block 690, part of Lot 12; Block 690 is 184 feet by 125 feet. This information was furnished to me by Mr. Alrich, representing the Consolidated Gas Company.

Q. Now, Table No. 70; can you locate that property?

A. Yes, sir.

Q. Tell me when it was taken?

A. Table 70; Block 691, part of Lot 1. It also included a small triangular area on Block 690.

3272D Q. When was it taken by the City or condemned by the City?

A. Title and possession passed October 17th, 1902, and this information was furnished to me by Mr. Alrich representing the Consolidated Gas Company. It was furnished to me by Mr. Davidson, in fact.

Mr. Ransom: In a written memorandum?

The Witness: Yes, sir.

Q. When was the property credited in the account?

A. The property was credited to the account called "Land Devoted to Gas Operations" in May, 1910, and this credit was subsequently transferred to the fixed capital December 31st, 1908, account, in Feb-

3273D ruary, 1911.

Q. Approximately for eight years it was carried in the fixed capital account before it was credited.

A. Yes, sir.

Q. Table No. 71. Can you identify that property?

A. Block 691, Lot 11, and this information was furnished to me by Mr. Alrich representing the Consolidated Gas Company.

Q. To return to Table No. 71 a minute, can you tell when title and possession passed?

A. Title and possession passed November 14, 1910, as shown by written memorandum furnished to me by

Mr. Davidson, representing the Consolidated Gas Company.

Q. And was credited in December, 1910?

A. Yes, sir.

Q. Tables Nos. 72, 73 and 74. Can you tell the block for Table No. 74?

A. I can furnish that from my working papers.

Q. Yes, will you?

A. 332 Avenue A, Block 978, Lot 4.

Q. Go right on to Tables 75, 76, 77, 78, 79 and 80. I would like to have you identify the property described in Table No. 80? 32732

A. West 41st Street, 100 feet east of Eleventh Avenue.

Q. And the block and lot?

A. Block 1070, Lot 5.

Q. Tables 81, 82—now, Table No. 83, can you identify that property, the lot and block?

A. Block 1704.

Q. Were there any buildings that you were able to find?

A. No record appears of buildings in the real estate account.

Q. Tables Nos. 84, 85, 86, 87, 88. I would like to ask you about Table No. 88, from your working papers, the location? 32733

A. West 132nd Street and Twelfth Avenue, Block 1999.

Q. Does that take into account the assessments, or did the company take into account assessments, did you find?

The Master: Do you mean on Table 88?

Mr. Chambers: Yes.

A. Table No. 88 does not show any charges for assessments.

Q. Should assessments have been taken into account as to that table?

A. Assessments have been paid on—

Q. (Continued.) Or as to the information in the company's books?

A. Assessments have been charged to the real estate account affecting this particular property.

Q. And yet you found nothing in the company's book entries in regard to the assessment, charged to that particular account?

A. Well, there is no such account as West 132nd
32735 Street and Twelfth Avenue, that appears in the company's books; but in the Fixed Capital, December 31, 1908, account and in the real estate account prior to January 1, 1909, assessments have been charged which affect this particular property on Block 1909.

Q. Table No. 89. Explain that table, will you, please?

A. Table No. 89 relates to the Shadyside property. "Land Devoted to Gas Operations" account was credited by journal entry on page 131 in May, 1910, $432,196.22, which credit was subsequently transferred in February, 1911, to Fixed Capital account, December 31, 1908. Sundry Debtors Blotter No. 22,
32736 page 608, shows a charge to Henry J. Hemmons for $366,529.94, for purchase of property at Shadyside. The difference between the amount credited to Fixed Capital, December 31, 1908, account for real estate, that is $432,196.22, and the amount charged to Henry J. Hemmons, that is $366,529.94, or $65,666.28, was charged to depreciation account.

Mr. Ransom: By the Company?

The Witness: On the Company's books.

Q. Tables 90 and 91. Explain Table No. 91, will you, please.

A. Table No. 91 shows the balance on January 1st of each year, from 1909 to 1918, the total charges or debits for each year from 1909 to 1918, the total credits for each year from 1909 to 1918, and the balances at the end of each year from 1909 to 1918, inclusive, as they appear in the "Land Devoted to Gas Operations" account, 1909 to 1918, in the Operating Ledgers of the Consolidated Gas Company.

The Master: I suppose that was under the ruling of the Public Service Commission at that time?

Mr. Ransom: What? 32738

The Master: The land devoted to gas operations.

Mr. Ransom: It is split into two parts, land devoted to gas operations and land not devoted to gas operations.

Q. Going back to No. 90, I want to ask you how the assessments were charged, referring to Table 90?

A. The assessments or the distribution of assessments as shown by Table 90 was charged to the real estate account during the years 1906 and 1907, and the charge in the real estate account was made by transferring from charges appearing in the assessment accounts for the years 1906 and 1907 in the Operating 32739
Ledgers of the Consolidated Gas Company.

Q. Up to here, the tables are correct?

A. Yes, sir.

Q. And of course you don't know whether the figures in the Company's books are correct or not?

A. No, sir.

Q. Now, Table 92, what does that show?

A. Table 92 shows the charges or debits appearing in the land devoted to Gas Operations Account from 1909 to 1918, inclusive, as carried in the Operating Ledgers of the Consolidated Gas Company. This

table has been compiled from the charges, but does not appear in the Company's books in this particular form.

Q. Is it correct?

A. Table 92?

Q. Yes.

A. It is correct.

Q. Table 93, what does that purport to show generally?

A. Table 93 purports to show in general the credits appearing in the account called "Land Devoted to Gas Operations from 1909 to 1918, Inclu-
32741 sive," as this account appears in the Operating Ledgers of the Consolidated Gas Company, and the information does not appear in the Company's books in this specific form, this table having been compiled from the accounts.

Q. Is it correct?

A. It is.

The Master: As compiled?

The Witness: As compiled.

Q. Now, the next table, 94, is the Book Cost of Land Devoted to Gas Operations?

A. Yes, sir.

32742 Q. Different pieces of property?

A. Yes, sir.

Q. That is compiled from the Company's books?

A. Yes, sir, from the accounts.

Q. And it is correct?

A. Yes, sir.

Q. Now, Tables 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111 and 112, those are all tables details of the book cost of these various pieces of property stated in the heading?

A. Yes, sir.

Q. And they are correct?

A. Yes, sir.

Q. Take Table 113, will you explain that table, or rather explain the Tables 101 to 112?

A. From 101 to 112, inclusive?

Q. Yes.

A. Table 101 purports to show the details of Item No. 1 appearing in Table 94; Table No. 102 purports to show the details of Item No. 2 appearing in Table No. 94.

The Master: 101 to 112, inclusive are tables purporting to show the details of the corresponding items on Table 94?

The Witness: That is correct. 32744

Q. And that includes Table 113 too, which corresponds to Item No. 13?

A. Yes, sir.

Q. Can you explain the relations of Tables 19 and 113?

A. The property stated in 113 is a part of the land that was sold by the Consolidated Gas Company to the New York Edison Company as shown by Table No. 19.

The Master: I don't quite understand that. Table 19 shows a sale.

Mr. Chambers: To the Edison.

The Master: Of a plot 250 x 206, in May, 32745 1905, to the New York Edison Company?

The Witness: Yes, sir.

The Master: This one shows a voucher April 30, 1918, New Amsterdam—Oh, they sold a portion of it back to the New Amsterdam Company.

The Witness: The same day that the Consolidated Gas Company sold that parcel of land to the New York Edison Company, the New York Edison Company sold it to the New Amsterdam.

The Master: And the New Amsterdam sold part of it back to the Consolidated?

The Witness: Yes, sir.

The Master: For $20,645?

The Witness: Yes, sir.

Q. Table 114, will you explain that?

A. Table 114 purports to show by properties the various assessment charges that appear in the account called "Improvements to Real Estate from 1909 to 1918, Inclusive."

Q. And the data you used in making up that table was the same that you have taken before, or you have taken it the same way as you have stated for Table—

32747 I can't find it, the other table relating to assessments for a prior period?

A. I think it was 58.

Q. Yes?

A. Yes, sir.

Q. And you obtained it in the same way you obtained the assessments for that other table, 58?

A. Yes, sir, excepting that I did not have to go to the Bureau of Assessments and Arrears for any portion of that.

Q. And is it correct?

A. Yes, sir, as compiled.

Q. As compiled?

32748 A. Yes, sir.

Q. Take Table 115, how did you obtain the assessment?

A. Why, assessment charges appeared in the Company's real estate account as shown by the Special Accounts Ledger from 1884 to 1905. I also found some assessment charges in the Real Estate Accounts as shown by the Company's Operating Ledgers during the year 1906 and 1907. From 1909 to 1918 I found assessment charges in the account called Improvements to Real Estate, in the Operating Ledgers of the Consolidated Gas Company, and then I made a

general search of other accounts and found in the General Structures account from 1909 to 1918, of the Operating Ledger of the Consolidated Gas Company assessments charges amounting to $12,943.88.

Q. Is that table correct?

A. Yes, sir.

Q. As compiled?

A. As compiled.

Q. Table 116 shows what?

A. Table 116 purports to show cost of certain land acquired 1884 to 1918.

Q. Naming the parcels? 32750

A. Yes, sir.

Q. And referring to the previous tables?

A. Yes, sir.

Q. And that data you obtained from the Company's books?

A. That data was compiled under the direction of Dr. Maltbie from the tables included in this report.

Q. Table 120, what does that purport to show?

A. Table 120 purports to show certain parcels of real estate sold or condemned, 1884 to 1918.

Q. Naming the property?

A. Yes, sir.

Q. Giving the previous tables there described? 32751

A. Yes, sir.

Q. And the book cost and the amount received?

A. Yes.

Q. Now, speaking of where you have a question mark, I take the first piece of property, Table 19, East 15th and 16th Streets, East of Avenue C, for the land, book cost land, you have a question mark. What does that indicate?

A. It indicates that the book cost of the land, that particular parcel, was not indicated by the record that I examined.

Q. You could not find it?

A. No, sir.

Q. And you do not know where it could be found? A. I have made no further search. In all of the records I have examined I have not been able to find it.

Q. Is that true of improvements?

A. Yes, sir.

Q. And wherever there is a question mark, that indicates you were unable to find the cost of the land or cost of the improvements?

A. Yes, I have been unable to find those particulars,
32753 yes, sir.

Q. And the table is correct as compiled?

A. Yes, sir.

The Master: As far as it goes?

The Witness: As far as it goes. And that table was made up under the direction of Dr. Maltbie.

Q. Now, will you explain please first as to the items in Tables 68, 70 and 89?

A. As shown on Table 120?

Q. Yes.

A. Table 120, item relating to Item 58, West 18th Street, shows, according to the Company's record,
32754 book cost of land $937,965.13, cost of improvements, $749,793.11, total $1,687,758.24; amount received for land $1,503,834.00, and for improvements $633,366.00, total received $2,137,200.00; expenses, $58,464.87, net profit or loss.

Q. It showed a profit, didn't it?

A. Yes, sir.

Q. Of how much?

A. $390,976.89.

Q. And that was credited?

A. Credited to profit and loss $507,404.00.

Q. And they charge depreciation?

A. Charge depreciation $116,429.11.

Q. Now, that is, without going into detail, 69 followed up with 69 and 89 in the same way, carrying those through?

A. Yes, sir.

Q. Now, all of those tables, so far as the information is tabulated or compiled from the Company's books is correct?

A. Yes, sir.

Q. Whether the company's figures are correct or not, you don't know anything about that? 32756

A. That is right.

Q. You took them as you found them?

A. Yes, sir.

Q. And your computations, tabulations and compilations are all correct?

A. Yes, sir.

Mr. Chambers: I offer in evidence Tables Nos. 8 to 120, with some omissions.

The Master: Well, I think you better run through them and read them off. You are offering in evidence this book or a series of maps fastened together with a title page, "New York Consolidated Gas Company, Book Cost of Real Estate—Land 1884 to 1918," is that correct? 32757

Mr. Chambers: That is correct.

The Master: And this book contains Tables Nos. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 is missing, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 is missing, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 is missing, 51, 52, 53, 54, 55, 56, 57 is missing, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92,

93, 94, and then skips to 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116 and then the last table is 120.

The Witness: That is correct.

The Master: Now, this book of tables, I suppose is objected to on the grounds previously stated.

Mr. Ransom: And on the ground it is immaterial, irrelevant and incompetent, no proper foundation has been laid, made upon an unsound basis, which is contrary to law, contrary to the
32759 uniform system of accounts, contrary to the facts so far developed in this case; further on the ground that it is an effort now on the part of the defendants to vary and contradict the testimony which they have themselves offered upon the question of the value of land for the purposes of this case, and that a large part at least of the matters contained in this offer as made have no bearing upon any issue in this case, either upon the question of operating expenses or upon the value of the property upon which this company is entitled to be secured a return by judicial action.

32760 The Master: Objection overruled.

Mr. Ransom: The other objections I shall ask leave to formulate on a motion to strike out after I have had an opportunity to examine and correct this very voluminous document.

The Master: The objections are overruled, the paper will be received in evidence as Exhibit AA-241.

Mr. Ransom: Exception.

Q. Now, Mr. Silverman, the first missing table we find is between 17 and 19, which is No. 18?

A. Yes, sir.

Q. Will you explain that, please?

The Master: One minute. Do you want to explain the absence of those tables?

Mr. Chambers: Yes.

The Master: Don't bother with that. I will assume that for one reason or another you are not ready with those tables, or that you withheld them for some other reason.

Mr. Chambers: We are ready. They are eliminated—I might explain one of them, and that will explain them all.

Q. Just state, will you, why any of those tables— 32762

The Master (interrupting): Was there a Table No. 18 prepared at any time?

The Witness: Yes, sir.

The Master: And it was eliminated from consideration?

The Witness: It was eliminated because it might have shown immaterial details, such as merely a bookkeeping entry. For instance, there might have been a charge of real estate account which should have been made to construction account, and was taken out, and it was a very small amount, and we were pressed for time and did not want to take time to type it. 32763

The Master: I will assume that the defendants did not consider it of sufficient importance, and that there is no point in omitting it other than that.

Q. It was only a supporting detail?

A. Yes, and I can furnish the detail. I have it in my papers, or I can furnish the typewritten paper, if you want.

Q. That is all. All the information is in the main tables there?

A. Yes.

32764

The Master: You can point out to the accountants of the Gas Company these items that were in these other tables, if they want to see them.

The Witness: Yes, sir.

The Master: All right, they can get them, and if they want to cross-examine you later on, they can do that later. What arrangement can we make with Mr. Silverman to take these tables?

Mr. Chambers: We are in this position, that he is now working on the Consolidated Gas case and doing work that Mr. Maltbie cannot spare

32765 him from for a minute, if we are going to close up our side, and if they take a half day to examine these papers, it takes a half day away from us, and we cannot spare him a minute.

Mr. Ransom: Well, we can take him tonight.

Mr. Chambers: Well, we want him all the while.

Mr. Ransom: Can you—you can cover all on these tables?

Mr. Chambers: No, but you cannot stop the progress of our defense.

The Master: What have you now, Mr. Silverman, to work on?

32766 The Witness: I have various details that Dr. Maltbie has asked me to work out for him.

The Master: Affecting what?

The Witness: Affecting the Consolidated Gas Company in connection with—

Mr. Chambers: I suggest he tell that confidentially to the Master.

The Master: Oh, what is the difference?

Mr. Chambers: What is the use letting them know what we are doing?

The Master: We want to get the facts, the books cannot be changed.

32767

Mr. Chambers: Well, I don't mind your knowing it, but why let the other side know about it?

The Master: I will withdraw my question. The cross-examination is suspended for the time being, until counsel for the complainant and his experts have a chance to analyze and study these tables.

Mr. Ransom: I judge the direct-examination is also suspended.

The Master: The direct? I understand that is finished.

32768

Mr. Chambers: We are through.

F. J. Bell, recalled.

Direct-examination by Mr. Chambers:

Q. Mr. Bell, you prepared an original and three copies here of tax valuations from the records in your department, of the deceased deputies whose names appear?

A. Yes, sir, and also of Plaatje and Bayer.

The Master: Bayer is the man who is sick, and Plaatje is the man who has disappeared?

32769

The Witness: Yes, sir.

Q. And these are taken from the books and records?

A. They are.

Q. Who checked them up and prepared this?

A. Two of my best clerks.

Q. And you relied on them for the correctness of it?

A. Yes, sir, I have my initials on all of them.

32770

Mr. Chambers: I will offer the tabulation in evidence. Your Honor can withhold ruling on it until they examine it.

The Master: All right. Mark it for identification for the time being.

Paper marked Defendants' Exhibit AA242 for identification.

Mr. Chambers: I ask the other side to produce a letter dated January 7, 1916, of Walter R. Addicks to the Public Service Commission, with the enclosure.

The Master: Copy of a letter?

32771 Mr. Chambers: Copy of a letter.

The Master: Where is the original?

Mr. Chambers: I cannot find it.

Mr. Ransom: This is the first time I have heard of any such request. I will look it up.

The Master: Make a memorandum of it and see if you have it.

Mr. Ransom: On what subject?

Mr. Chambers: Gas oil contracts of the New York & Queens Company.

I ask the other side if they put in evidence a contract with the Gulf Refining Company for gas oil supplied to the Queens Borough Gas &

32772 Electric Company covering the period from April 1, 1906, to April 1, 1907, at a price of 3 1/8 cents per gallon.

Mr. Ransom: The record speaks for itself.

Mr. Chambers: I read into the record a letter here from Mr. Macy—

Mr. Ransom: I object to the reading of any letter from Mr. Macy.

Mr. Chambers: I will show it to the Court. We want to avoid calling Mr. Macy if we can.

Mr. Ransom: I am not surprised that you tried to avoid calling him.

Mr. Chambers: I ask if the other side has that exhibit.

Mr. Ransom: I haven't in court. I don't know whether it is in evidence or not.

Mr. Chambers: I think they might look up and see if they have that original exhibit. If it is in evidence there is no use of putting it in again.

Mr. Ransom: You might read the record and find out.

32774

ADNA F. WEBER, called as a witness on behalf of the defendants and being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CLARK:

Q. Dr. Weber, what is your profession?

A. Political economist.

Q. Where did you receive your education?

A. I was educated at Cornell University and Columbia University, and other universities in the United States and Europe.

Mr. Ransom: What degrees? 32775

Q. What degrees?

A. Degree of Bachellor of Philosophy at Cornell in 1894; Degree of Doctor of Philosophy at Columbia, in 1899.

Q. Between 1894 and 1899 you studied at other universities in this country and in Europe?

A. That is correct.

Q. What have you been since 1899, what has been your profession?

A. In 1899 I became Deputy Commissioner of the State Bureau of Labor Statistics at Albany, and con-

tinued in that position until the consolidation of that bureau with the office of Factory Inspector, and State Board of Mediation and Arbitration, to form the Department of Labor in 1901. At that time I became Chief Statistician to the Department, and continued in that position until the creation of the Public Service Commission in 1907.

Q. Since 1907 you have been Chief Statistician of the Public Service Commission?

A. Yes, I was appointed in November, 1907 as Chief Statistician, and organized the Bureau of Statistics and Accounts, of which I have since been in 32777 charge.

Q. What has your work with the Commission consisted of?

A. It is the work leading up to the publication of statistics of public utility operations on one side, and the conduct of special investigations involving the finances of utilities in special proceedings before the Commission, on the other side.

Q. Did you take part in conferences in the years 1907 and 1908 which resulted in the establishment of the Uniform System of Accounts?

A. I did. At the time of the organization of the Commission the Congress had but just enacted the 32778 so-called Hepburn law amending Section 20 of the Interstate Commerce Act and conferring full power upon the Interstate Commerce Commission to prescribe systems of accounts—

The Master: What has that got to do with it? He answered your question that he had conferences. Put your next question.

Q. Who took part in those conferences, Dr. Weber?

The Master: What difference does that make? What is the point?

Mr. Clark: To show his part in the preparation of that Uniform System of Accounts, the part he took in the preparation of the Uniform System of Accounts, and the position he has held so far as public utility and railroad accounting is concerned.

The Master: This is all on the question of qualification?

Mr. Clark: Yes.

The Master: Ask him what part he took. I thought you were going into the result of how these conferences eventuated in that form, and 32780
things of that sort.

Mr. Clark: No.

Q. What part did you take in these conferences, Dr. Weber?

A. I represented the Commission on the various committees which were co-operating for the purpose of establishing standard accounting classifications throughout the United States among the Commissions that then had power over accounting procedure.

Q. How long did these conferences last?

A. During the latter part of 1907 and most of the year 1908.

Q. Did you personally prepare a great part of 32781
the accounting order called the Uniform System of Accounts?

A. That was not the work of any man; that was the joint product of all of those conferences.

Q. Are you a member of any committees on accounting?

A. I have been a member for many years of the Committee on Statistics and Accounts, first of Electric Railways, and later of Public Utility Companies, of the National Association of Railway Commissioners. In 1912 '13 and '14 I was chairman of the

32782

Committee on Statistics and Accounts of Electric Railways, and in 1916 I was chairman of the Committee on Statistics and Accounts of Public Utility Companies, of that association.

Q. Dr. Weber, I show you a table entitled, "Consolidated Gas Company, Accrued Amortization of Capital," and ask you if that paper was prepared under your direction?

A. It was.

Q. The first three pages of that are copies of resolutions and affidavits filed by the complainant company with your Commission—is that so?

32783

A. Yes.

Mr. Clark: I have the original here, if your Honor please, but I would like to have it go in in that form.

Mr. Ransom: It is a question of whether it goes in at all.

Q. Was that rule filed pursuant to the provisions of the uniform system of accounts, Dr. Weber?

A. It was.

Q. Has that rule ever been formally amended?

Mr. Ransom: I object to that as incompetent and calling for a conclusion. Let them produce any papers they have, complete files, on any of these matters.

32784

Mr. Clark: Dr. Weber is certainly competent to state whether it has been formally amended.

The Master: He can state whether any other papers have been filed with the Commission, changing the rule. I will sustain the objection as to form. I will let Dr. Weber state whether any other papers were filed subsequent to this paper bearing upon the same subject-matter and affecting it in any form.

The Witness: No papers filed in accordance with the rules of the Commission that could be classified as a rule concerning amortization.

Mr. Ransom: I move to strike out the answer. It is purely a matter of conclusion. Dr. Weber cannot reverse the Court of Appeals just off-hand here.

The Master: I will strike out the answer. Dr. Weber may say whether any papers have been filed subsequent to this paper affecting the same subject.

Q. Dr. Weber, accompanying the report of the 32786
complainant company for the year 1915, and attached to the report, was a paper filed with the Commission, copy of which constitutes page 4 of this exhibit?

The Master: You mean a copy of the insert on page 37 of the annual report of the Consolidated Gas Company to the Public Service Commission for 1915?

Mr. Clark: Yes.

The Master: Was that filed?

The Witness: This is a copy of the insert on page 37 of the annual report filed by the Consolidated Gas Company of New York for the year 1915.

32787

The Master: Let me see the original.

Q. Dr. Weber, on the following page are the figures that appear there in the various columns taken from the operating ledgers of the company?

A. That is correct.

Q. They were taken under your direction?

A. Yes, sir.

Q. And have been checked under your direction?

A. Yes, sir.

Q. Do you believe them to be accurate?

32788

Mr. Ransom: I object to the question. I very much doubt whether this witness has ever examined anything or checked anything.

The Master: But he says he did.

Mr. Ransom: No, he says they were checked under his direction which means, I suppose, that some more of the boy scouts were sent out, and they came back and told him they had checked them.

The Master: How far does your knowledge go about the accuracy of this page?

32789 Mr. Chambers: Is it necessary always for counsel to make what I call those insulting remarks? Just see what he said on the record.

The Master: I don't care.

Mr. Chambers: I don't care at all, but it shows the calibre of the fellow and I object to it.

The Master: Just how much personal knowledge have you of the accuracy of this page?

The Witness: The work was done by men under my supervision. I do not add and subtract any figures myself. I select men who can transcribe, add and subtract, and other men are

32790 assigned to check their calculations—

Mr. Ransom: This witness never saw the ledger, never checked any of these figures.

Mr. Chambers: I suggest that counsel make his objection.

Mr. Ransom: I am making it. I am standing up for the purpose.

By the Master:

Q. Do you know what man took these figures off from the books?

A. No, I cannot say.

Q. Is there any way of finding out?

A. If any one man did it. I presume there was more than one man working on it at different times.

Q. This presumably is taken from the books?

A. It is all taken from the books.

The Master: Go ahead, Mr. Clark.

The Witness: It can be checked back directly to the books if there is any question about it.

The Master: Next question.

By Mr. Clark:

Q. The following pages of this exhibit are also taken from the operating ledgers? 32792

Mr. Ransom: I object to that. The witness does not know.

A. Taken from the operating ledgers and supporting papers among the records of the company. The details do not necessarily appear upon the operating ledger.

Q. Were they prepared under your direction?

A. Yes, sir.

Q. Were they checked under your direction?

A. Yes, sir.

Q. Do you believe them to be accurate?

A. I do.

The Master: At any rate, you claim, Major Clark, that these are statements prepared by assistants to you, purporting to be a statement of what the books themselves show. 32793

Mr. Clark: I do, yes, sir. It is the same situation that arose in the Northern Pacific case, where there were a great many people engaged in the work, and the man who was in charge of it was put on the stand.

The Master: The answer to it is that where ever you say it is simply an extract from the books that I can find myself by spending the

time, and which you claim is a summary prepared from the books for the convenience of the Court, I am going to take it.

Mr. Ransom: This is not by any possibility an extract from the books. It is something taken from the books and jumbled up with a lot of political economists' theories.

The Master: The minute you show me that it is jumbled up with a lot of political economists' theories it will go out of the window.

Mr. Clark: There is no basis for that state-
32795 ment.

Mr. Ransom: Why, even the title shows that it has nothing to do with the company's books, there isn't any such thing on the company's books.

The Master: I will take it.

Mr. Chambers: That is just the usual kind of stuff that is handed out by Ransom.

By the Master:

Q. Are there working sheets somewhere to indicate how these figures were gotten?

A. I think those are still in existence; I am not positive.

32796 Q. You see, if experts for the complainant come here and say they cannot work this out, they cannot explain it—

A. It can be explained to them.

Q. And your office is not able to show them how you got at that, I will have to disregard it, that is all.

Mr. Ransom: We would like to have Mr. Frank, or whoever it was—

The Master: Go on with the next question.

By Mr. Clark:

Q. Next to the last page of this exhibit, Dr. Weber, is entitled "Items other than fixed capital retirements charged to depreciation reserve." On what basis have

you separated the items which you claim by this page are other than fixed capital retirements from the fixed capital retirements of the company?

A. An examination was made of the charges to the reserve, and any charge for any other purpose than the retirement of property included in fixed capital was listed here for the purpose of making a separation between fixed capital retirements and other charges to the reserve.

Mr. Ransom: I move to strike out the answer of the witness. The witness did not do it, the witness did not examine these accounts, the witness 32798
does not know what is in them or anything they are talking about here.

The Master: I will let it stand.

Mr. Ransom: Exception.

Q. For instance, the item "Loss on Gas Stoves and Appliances" included on that page is separated from fixed capital retirements on what ground?

A. On the ground that these particular charges relate to stoves and appliances in stock and not stoves and appliances installed or rented.

Q. Stoves and appliances in stock are not fixed capital?

Mr. Ransom: Objected to. Your Honor notices already that we have got into the realm of 32799
this economic theory which the witness is—

The Master: I will sustain that objection.

Mr. Ransom: I move to strike out the answer.

The Master: There is not any answer.

Mr. Ransom: Oh, yes, there is. He explains—

The Master: He explains what the figure is, but I am not letting him say it is or is not fixed capital.

Q. The item "Overhauling Holders on Account of Deterioration" was thrown out or placed on this schedule for what reason?

Mr. Ransom: Objected to as incompetent, immaterial and irrelevant.

The Master: I will not take his reasons. I will take your argument on that.

Q. The figures on the last page, Charges to Reserves on Account of Fixed Capital. Do you intend by this exhibit to state that the amounts charged off to fixed capital are proper amounts?

Mr. Ransom: Objected to as incompetent, immaterial and irrelevant.

The Master: I will allow it.

32801 Mr. Ransom: The witness has no qualifications.

The Master: You mean taken from the books?

Mr. Clark: Yes, taken from the books.

The Master: I will let the witness state that under his direction they were taken off the books.

A. These figures were taken off the books. I do not know as to whether they are proper or not.

Mr. Clark: I offer this in evidence.

The Master: Do you mean this tabulation?

Mr. Clark: This exhibit, yes.

The Master: What do you call it, Schedule No. 18?

32802 Mr. Clark: Schedule No. 18.

The Master: Being endorsed, "Consolidated Gas Company of New York," including accrued amortization of capital (1) rule fixed by company March 2, 1909 (3 pages); (2) Resolution of Board of Trustees 1915; (3) Changes and balances in reserve accounts 1906-1918 (2 pages); (4) Detail of charges on account of fixed capital retired 1906-1918.

Mr. Ransom: Just a moment, I want to be heard on that. I object to this as incompetent, immaterial and irrelevant. It does not repre-

32803

sent the work of this witness and it does not represent the judgment of this witness. If it did represent his judgment he has undertaken to do something he is not qualified to do, and if anyone else undertook to do what is here set forth they undertook to do something that has no warrant in law or in fact.

In the first place, the document is called Accrued Amortization of Capital, which in itself represents a theory of this witness, for which the Court of Appeals have held there is no warrant in law, in which this witness trying to act through the form of law has no power to prescribe. All 32804
through the pages of this document are expressions of judgment and efforts to make classifications and divisions on the part of some person not identified and in no way either qualified or entitled to do any such thing.

For example, on the first of the blueprints the charges to the reserve have been divided up by some person into two columns, one called "On Account of F. C.," which I suppose means Fixed Capital Retirements, and the other Items Other than Fixed Capital Retirements, to which there is a footnote, "In addition there are credits included in preceding column, which is strictly not 32805
fixed capital retirements"; and "See depreciation sheets," which are in no way before us.

The same way on the next sheet it is made up entirely of what he calls Items Other than Fixed Capital Retirements Charged to Depreciation Reserve, whatever the witness or the person who did this thought that was. Then with this addendum, that for other items charged to the reserves, that are not fixed capital retirements, see detailed depreciation statements; and then he undertakes, or someone undertook, to make a classi-

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fication of items in a way that has no warrant in law and on which no disclosed person is in any way qualified.

The last sheet likewise has been divided up in some way that it is impossible to tell; and the person who did it is not here, at least not on the stand.

Then the last sheet, that is entitled "Charges to Reserves on Account of Fixed Capital Retirements, 1906 to 1918," and that is divided up apparently between class of fixed capital and something else, with various footnotes and computations.

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The whole thing leads into a realm of theory and speculation and of attempted non-compliance by the witness with what the Court of Appeals has indicated to be the law of the State, that will lead us into infinite trouble.

The Master: I am going to take it.

Marked Defendants' Exhibit AA243.

Mr. Ransom: I will ask what bearing has any such thing on this case.

The Master: I am taking this for the time being, in order to permit the defendants to develop their theories, good or bad. I want you to

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examine this thoroughly so that you can cross-examine Dr. Weber and indicate these things that you have said in your objection to the receipt of the paper are well founded in fact.

Mr. Ransom: How could I examine Dr. Weber?

The Master: I don't know.

Mr. Ransom: I might as well examine the first man I met on Park Row.

The Master: I might strike this out later, but just now I am going to take it.

Mr. Ransom: There is no man in the court room knows less about that than Dr. Weber.

The Master: This case is not going to be decided on theories of any kind; I am going to decide this case on definite statements of fact, and going to eliminate all fancy theories of depreciation or otherwise.

Mr. Ransom: What is the use of taking up a lot of time on this depreciation?

Mr. Clark: There was an awful lot of time taken up on depreciation, wasn't there?

The Master: Proceed.

Q. Dr. Weber, I would like to ask you a few theoretical questions to make the record here. 32810

The Master: No, I do not want any theoretical questions. I will not take theoretical questions; this case is going to stick right down to the bone.

Mr. Clark: Probably the leading public utility expert of the country—

The Master: I would not care if he was the leading public utility expert of the world. I am not going to get into any theory in this case.

Mr. Clark: But I would like to make a record in this case.

Q. Assuming, Mr. Weber, that the retirements of this company which have been charged to this reserve, related some of them, to property which was in existence prior to the settling up of the fund to which they were charged, will you state whether in accordance with the uniform system of accounts and proper public utility accounting the entire amount of such requirements less salvage should have been charged to this fund? 32811

Mr. Ransom: Objected to as incompetent, a question of law which the Master must pass upon.

The Master: Objection sustained.

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Mr. Clark: Exception.

Mr. O'Brien: Your Honor, have we not entered that realm from which you now forbid us?

The Master: If you have you will get out of it.

Mr. O'Brien: In the testimony of Gawtry, Addicks, *et al.*?

The Master: No.

Mr. O'Brien: You let Mr. Gawtry take us into the tent and read somebody's palm as to the future, and Allison's was purely way in the midst
32813 of the clouds, and you let us ponder there with him, and you absorbed whatever was absorbable while he was on the stand.

Mr. Chambers: I suggest that you strike out Allison's testimony.

Mr. O'Brien: You heard Mr. Miller come forward and advance the most untenable propositions, that were entirely theory, in a hurried, hasty, cursory feeling and seeing, listening and hearing in the works, and then he could determine how many dollars and cents ought to be deducted from the present value of the property. It is theory and your Honor did not pronounce it
32814 then.

The Master: I said I was going to decide this case not on any theory, but on facts.

Mr. O'Brien: Then I conclude that the epitaphs and the stones have already been laid over the graves of Allison, Gawtry and Miller.

Mr. Miller: I do not know anything about that. Proceed.

Q. Assuming that the retirements which have been made by this company and charged to reserve have been made at book costs, with the proper allowance for salvage, would you say that such a practice was in accordance with the uniform system of accounts and was good accounting practice?

Mr. Ransom: Objected to as incompetent and irrelevant.

The Master: Objection sustained.

Mr. Clark: Exception.

Q. Does the fact that the reserve of the Consolidated Gas Company provides for contingencies accord with 32816
your judgment of good accounting practice in the City of New York?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. Chambers: Exceptions to the defendant.

Q. Dr. Weber, taking this exhibit and the last page of it, as to the time of gas appliances rented, the retirements for the year 1915 appear to be $243,648.42.

The Master: For what year?

Mr. Clark: 1915, which is the last classification.

The Master: Gas appliances rented?

Mr. Clark: Yes. 32817

The Master: For 1915?

Mr. Clark: For 1915, yes.

The Master: There does not seem to be any here.

Mr. Clark: In the last column.

The Master: I see it.

Q. (Continuing.) And for 1916 $29,195.37. Can you account for the great diminution in that amount in 1916 over 1915?

The Master: What do you mean, account for it by some theory?

Mr. Clark: No, by the fact, how these things were set up in 1915.

Mr. Ransom: Objected to. The witness does not know anything about it.

Mr. O'Brien: Your Honor, can't we explain what these figures mean?

The Master: Yes, he can tell us what the figure $243,648.42 represents and how it was reached.

Mr. Ransom: How does he know?

The Master: I do not know.

32819 Mr. Ransom: Well, he does not.

The Master: We will find out.

Q. Can you state, Dr. Weber, how the figures for gas appliances rented, gas stoves rented—

The Master: Let us take one item at a time.

Q. Gas appliances rented—how that was arrived at?

The Master: You are talking now about this figure $243,648.42?

Mr. Clark: Yes.

The Master: In the year 1915?

Mr. Clark: 1915.

By the Master:

32820 Q. How was that arrived at?

A. That was charged to the company on the basis of twenty per cent of the total book costs of gas appliances.

Q. What is that?

A. That figure represents a charge of the company.

Q. By the company?

A. By the company, on the basis of twenty per cent of the book cost of gas appliances. They wrote off twenty per cent of the cost of gas appliances.

Mr. Ransom: I move to strike that out. The witness has not examined the books; he does not

know anything about it and it is purely hearsay and incompetent.

Q. This $243,648.42 represents twenty per cent?

A. That is true, of the book cost of all the appliances in that year.

Q. Where did you get that information from?

A. Both from information on file in the company's office and by confirmation through computation.

Q. What computation?

A. Comparing the $243,000 with the total amount in that account on the books for that.

Q. 1916, was the item of $29,000 arrived at in the same way? 32822

A. It was not.

Mr. Ransom: I object to this line of inquiry. The witness does not know anything about it.

The Master: I will take it.

Mr. Ransom: How can he testify to that?

The Master: Why, he sent some men up there and they took off some figures at his direction and brought them back to him, and that is what he says his figures show. I am going to let him state.

Mr. Ransom: Exception.

By Mr. Clark: 32823

Q. How was it arrived at in the year 1916?

Mr. Ransom: I object to it as incompetent, the witness not being qualified.

The Master: This figure of $29,915.37, if you know?

A. It was not on the basis of an arbitary percentage, but on reports of retirements.

Q. The actual gas appliances retired, or the cost of the actual gas appliances retired?

A. Yes.

32824 Adna F. Weber, Direct.

The Master: In other words you say there was a change in the method between 1915 and 1916 of setting up this item?

The Witness: Yes.

Q. Was the twenty per cent method that you have described in force prior to 1915; was that twenty per cent method in force?

Mr. Ransom: I object on the ground the witness has neither knowledge nor qualification.

The Master: I will let him answer.

Mr. Ransom: Exception.

32825 A. For each year in the period from 1906 to 1915.

Q. And from 1916 to 1918 the actual retirements were charged off?

A. In 1916, 1917 and 1918, yes.

Q. Automobiles and harness—automobiles and accessories, what was the system in regard to that from 1906 to 1915?

Mr. Ransom: Objected to on the ground of entire lack of knowledge of the witness.

The Master: I will allow it.

Mr. Ransom: No witness has testified to this who could be cross-examined.

The Master: I will allow it.

32826 Mr. Ransom: Exception.

Mr. Chambers: I think it is wholly unnecessary for counsel to show his peeved disposition.

Mr. Ransom: Counsel is not peeved.

A. It started off on a twenty per cent basis.

The Master: And 1916, 1917 and 1918?

The Witness: On actual retirement basis.

Q. The item of horses, wagons and harness, on what basis was that charged off in the years from 1906 to 1915?

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. Ransom: Exception.

A. On the same basis of twenty per cent.

The Master: And since then?

The Witness: Since then on actual retirements.

Q. The item of tools and implements, what basis was that charged off at in the years 1906 to 1914?

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. Ransom: Exception.

A. The same factor of twenty per cent.

Q. And from 1915 to 1918? 32828

A. 1916, 1917 and 1918, ten per cent basis.

Q. The figure of office furniture and fixtures, was there a change in that?

A. From 1906 to 1914, ten per cent. And after 1915 actual retirements.

Mr. Clark: That is all I have on that one exhibit. That is all I have on that one subject, your Honor. I may put in some pages of the Report of the Consolidated Gas Company, preliminary to another exhibit. I ask the complainant whether they object to these on the ground that these are not the original documents, the first four pages? 32829

Mr. Ransom: I do not raise the objection that such of the documents as they have put in of this proposed exhibit, that the purported copies are not originals. The file is incomplete, but I do not raise the point that these particular ones which they have seen fit to include are not originals.

The Master: Go ahead.

Mr. Clark: I offer in evidence such part of page 53 of the Annual Report of the Consolidated Gas Company for 1909 having to do with Miles of Mains.

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The Master: It will be considered marked.

Mr. Clark: Such part of page 54 as has to do with services.

The Master: It will be considered marked.

Mr. Clark: Such part of page 55 as has to do with Consumer's Meters, and such part of the same page as has to do with Gas Made, Gas Sold and Gas From Other Sources; such part of page 37.

The Master: For the same year?

Mr. Clark: Same year. As has to do with Operating Revenue; such parts of pages 37, 39 and 40 as have to do with Gas Operating Expenses; such part of page 35 as has to do with the taxes and uncollectible bills.

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The Master: They will be considered as marked in evidence.

Mr. Clark: From the 1910 report of the Consolidated Gas Company such parts of page 53 as have to do with Miles of Mains; page 54 as to Services; page 55 as to Consumer's Meters, Gas Made, Gas Sold and Gas From Other Sources; page 37 as to Operating Revenue and Operating Expenses; pages 39 and 40 as to Gas Operating Expenses; page 35 as to Taxes and Intercompany Sales. 1911, page 47, Miles of Mains; page 48 as to Services; page 65 as to Consumer's Meters, Gas Made, Gas Sold and Gas From Other Sources; page 52 as to Operating Revenue; pages 55, 56 and 57 as to Operating Expenses; pages 50 and 51 as to Taxes, Uncollectible Bills and Intercompany Sales; Reports of the Consolidated Gas Company, from 1912 to 1915, inclusive, pages 47 as to Miles of Mains; 48 as to Services; 65 as to Consumer's Meters, Gas Made, Gas Sold and Gas From Other Sources; page 52 as to Operating Revenue; pages 55, 56 and

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57 as to Operating Expenses; pages 50 and 51 as to Taxes, Uncollectible Bills and Intercompany Sales; the Reports of the Consolidated Gas Company for the years 1916 to 1918 inclusive, the following pages: 47 as to Miles of Mains; 48 as to Services; 65 as to Consumer's Meters, Gas Made, Gas Sold and Gas From Other Sources; page 52 as to Operating Revenue; 50 and 51 as to Gas Operating Expenses; 55 and 57 as to Taxes, Uncollectible Bills and Intercompany Sales.

The reports of the Astoria Light, Heat & Power Company for the years 1913, 14 and 15, inclusive as to Gas Sold by the Astoria Company to the Consolidated Gas Company, pages 51 and 52. 32834

The Master: They will be considered as marked in evidence. Anything else?

Mr. Clark: I want to put in a table based on them.

The Master: You will have to do that tomorrow morning at 9:30.

Adjourned to January 21, 1920 at 9:30 a. m.

Last Complainant's Exhibit 457. 32835
Last Defendants' Exhibit AA243.